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No.

IN THE

Supreme Court of the United States

Kenneth K. Chemi,

Petitioner,

v.

CNA Insurance Companies, et al.,

Respondents.

On Petition For Writ Of Certiorari
To The Supreme Court Of The State Of California

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Is ***deciding***, by means of secret ex parte communications, for and on behalf of Justice Miriam A. Vogel, Presiding Justice Vaino Spencer and Justice Reuben A. Ortega of the Court of Appeal of the State of California, Second Appellate District, Division One, by the litigating defendants' and respondents' counsel of record, Ms. Gretchen S. Carner, who has direct interest in the outcome of this litigation, ***as their alter ego, creating a (sham) Pseudo Court of Appeal***, in the underlying case, lawful and/or constitutional?

2. Is ***authoring the Opinion***, by means of secret ex parte communications, for and on behalf of Justice Miriam A. Vogel of the Court of Appeal of the State of California, Second Appellate District, Division One, by the litigating defendants' and respondents' counsel of record, Ms. Gretchen S. Carner, who has direct interest in the outcome of this litigation, ***as her alter ego, creating a (sham) Pseudo Court of Appeal***, in the underlying case, lawful and/or constitutional?

3. Is ***writing Tentative Ruling***, by means of secret ex parte communications, for and on behalf of Judge Wendell R. Mortimer, Jr. of the Superior Court of the State of California for the County of Los Angeles, by the litigating defendants' counsel of record, Ms. Gretchen S. Carner, who has direct interest in the outcome of this litigation, ***as his alter ego, creating a (sham) Pseudo Superior Court***, in the underlying case, lawful and/or constitutional?

4. Is the reach of a court's exercise of personal judicial discretion determined by the level ***of financial might of the parties - THE RICH AND WELL-CONNECTED*** constitutional?

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5. Does the *en banc* denial of the Supreme Court of the State of California to look at the facts of this case comply with the traditional notions of fair play and substantial justice as guaranteed by the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States?

6. Is the decision of the Supreme Court of the State of California, by denying *en banc* to intervene and look into the '*mind-shocking*' facts of this case, fundamentally contrary to the holding of the United States Supreme Court's earlier decision that ***"any court decision obtained by means of fraud is void"***?

7. In holding that, I, the petitioner, made an overwhelming showing of actual facts, did the Supreme Court of the State of California look the other way and allowed the ***Court Corruption Scandal*** to be covered-up by summarily denying to look at the compelling evidence from the court records without a hearing of any kind?

8. Does the clock of statute of limitations ever start for filing further actions when such ***scandalous*** **'Opinion'** issued by such ***Pseudo Court of Appeal*** happens to be ***'an excellent masterpiece of massive judicial fraud with criminal mischief written all over it'***, and **is void** from its very inception?

PARTIES TO THE PROCEEDING BELOW

1. Kenneth K. Chemi

2. CNA Insurance Companies[1]
3. CNA Casualty of California
4. Ms. Gretchen S. Carner
5. Mr. Joseph M. Fredrics

I, the petitioner in this Court, Kenneth K. Chemi, an individual, was also the petitioner in the Supreme Court of the State of California, and was one of the plaintiffs along with Armaity Chemi[2], an individual, in the Superior Court of the State of California for the County of Los Angeles, and was one of the appellants in the Court of Appeals of the State of California, Second Appellate District, Division One. The respondents, CNA Insurance Companies, a corporation, and CNA Casualty of California, a corporation, were the defendants in the Superior Court of the State of California for the County of Los Angeles, as well as the respondents in the Court of Appeals of the State of California, Second Appellate District, Division One. Ms. Gretchen S. Carner (California State Bar No. 132877), an individual, litigating counsel of record for the aforementioned defendants and respondents, and my former attorney, Mr. Joseph M. Fredrics (California State Bar No. 39624), an individual, were also the respondents in the Supreme Court of the State of California.

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[1] CNA Insurance Companies has changed its name twice in the last five years from CNA Insurance Companies to CNA Personal Insurance and once again to Encompass Insurance.

[2] Armaity Chemi has withdrawn her name from this petition.

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C This Court must decide whether the Supreme Court of the State of California looked the other way and allowed the court corruption scandal to be covered-up. 28

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Evidence corroborating ***perjury and suborning of perjury by Ms. Gretchen S. Carner,*** the litigating counsel of record for the defendants D1

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Evidence corroborating **fraud** directly linking Ms. Gretchen S. Carner, the litigating counsel of record for the defendants and respondents, to the **deciding and writing of the so-called *scandalous* 'Opinion' issued by such *Pseudo Court of Appeal,*** and cover-up of the scandal by my former attorney, Mr. Joseph M. Fredrics, and his law firm E1

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Letter dated February 16, 2001 *(one year after the date of the so-called* ***scandalous*** **'Opinion')** from Mr. Joseph A. Lane, **Clerk of the Court of Appeal,** inadvertently **exposing the scandal** of the ***Pseudo Court of Appeal*** by revealing the true names and identities of the defendants and respondents on record at all times, supporting my accusations F1

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PETITION FOR WRIT OF CERTIORARI

I, petitioner, Kenneth K. Chemi, *pro se* ("petitioner", "I", "me", "my", "mine", "myself" or "Chemi"), respectfully pray that a Writ of Certiorari issue to review the *en banc* Order of Denial by the Supreme Court of the State of California dated March 20, 2002, and to resolve a clear conflict of decision between this Court and the California Supreme Court, and to review the ***Court Corruption Scandal and Cover-up*** by the ***Pseudo Court of Appeal*** as well as the Superior Court of the State of California in the above entitled proceeding. The review of this scandal, quoting the Honorable Justice David Souter of the Supreme Court of the United States, ***"... will shock the mind"***.

OPINIONS BELOW

The *en banc* order of denial by the Supreme Court of the State of California is reprinted in the Appendix hereto, at Appendix A; page A1. The ***scandalous*** **'Opinion'** issued by the ***Pseudo Court of Appeal*** of the State of California, Second Appellate District, Division One, dated February 17, 2000, is unpublished but is reprinted in the Appendix hereto, at Appendix B; pages B1-B9. The timely Petition for Rehearing was denied on March 8, 2000, and is reprinted in the Appendix hereto, at Appendix B; page B10. The Ruling by Judge Wendell R. Mortimer, Jr. of the Superior Court of the State of California for the County of Los Angeles granting the defendants' Motion for Summary Judgment is reprinted in the Appendix hereto, at Appendix C; page C13.

No one can find anywhere in the court records, (Appendix C; pages C6-C12), the so-called **Tentative Ruling** issued by the same Judge Wendell R. Mortimer, Jr. of the Superior Court claimed by the judge (Appendix C; pages C2-C3) during the hearing for defendants' Motion for Summary Judgment.

JURISDICTION

The Supreme Court of the State of California denied *en banc* to review my petition to look into my complaint regarding ***Court Corruption Scandal*** directly involving the ***scandalous*** **'Opinion'** issued by the ***Pseudo Court of Appeal,*** and other scandals involving the Superior Court Judge Wendell R. Mortimer, Jr., directly linking the litigating counsel of record for the defendants and respondents, Ms. Gretchen S. Carner, as well as my former attorney, Mr. Joseph M. Fredrics. The *en banc* denial by California Supreme Court, the state court of last resort, constitutes 1) a final assertion of jurisdiction, with no further review of those serious issues possible in the courts of the State of California; 2) a serious threat to national policies supporting due process rights; and 3) a creation of a **(sham) *Pseudo* Court of Appeal** by the State of California with the help of the litigating counsel of record for the defendants and respondents. The Supreme Court of the United States has jurisdiction of this case pursuant to 28 U.S.C. §§ 1254(1) and 1257(a).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS INVOLVED IN THE CASE

United States Constitution, Amendment XIV, Section 1:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

42 U.S.C. § 1983: Civil Action for Deprivation of Rights:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, *except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.*"

STATEMENT OF THE CASE

This case was instigated by insurance fraud committed by the insurance companies and their employees. On March 20, 1997, an elderly lady hit my car, a 1993 Nissan ALTIMA GXE, which was legally parked on the street of Los Angeles. The same night I called my insurance company, **CNA Insurance Companies and CNA Casualty of California** (CNA), and reported the incident. After two or three days, an adjuster, Michelle Chambers, from CNA's Orange County office called me to schedule an appointment for their appraiser to appraise the damage on March 26, 1997. Their appraiser, Tony Jimenez, came up with an amount of *more than $11,000 within 15 to 20 minutes* (Appendix D; page D2, para 3c.) and made it appear as if my car was a total loss and closed the file the same day. Mr. Jimenez made a 4-page-long list of items that he claimed needed to be fixed. The next day Ms. Chambers called me

and told me that my car was a total loss after telling me the appraiser's estimate. I did not believe that it would cost that much to fix the left quarter panel, the bumper, the trunk lid and the rear glass window, as major damages. I asked her to send me their appraiser's estimate. After reviewing his list of items I realized that he had deliberately duplicated parts, listed unnecessary parts that were not needed to be replaced, purposely inflated the cost of parts and repairs, etc. I suspected that something was wrong. Besides, no insurance adjuster would use *brand new* parts instead of replacing with used and/or like kind and quality parts (LKQ). *I used brand new parts, too, to be equally comparable ("apples with apples") in costs.* I told Ms. Chambers that my car can be repaired for less, and I will get it repaired. She would not budge to get my car repaired. She would force me to give up my car to them. When I refused to do so, "all hell broke loose" on me.

CNA *knowingly* filed a false statement with the Department of Motor Vehicles (DMV), and committed *a California Vehicle Code, Section 20 crime*:

> "*False Statements:* ***It is unlawful*** *to ... knowingly make any false statement or knowingly conceal any material fact in any document filed with the Department of Motor Vehicles or the Department of the California Highway Patrol.*"...

... stating that I am driving a salvaged car even after CNA was notified by someone, by the name of Manny, from the Department of Insurance, Fraud Division, that my car was already fixed for about $4000. Even then, CNA would refuse to pay me the actual cost of repairs of $4418.

CNA also falsely reported to the lien-holder of my car that my car was a total loss who started pressuring me to accelerate the payment of the remaining portion of the loan. When I kept on paying the lien-holder on a monthly basis per my contract, they in turn reported the matter to the credit-reporting bureau thereby blemishing my credit.

Despite repeated requests in writing by my previous two lawyers to *resolve* the problem *without litigation*, these requests were ignored by CNA. In order to avoid paying me the actual cost of repairs per my policy and pressuring me into giving up my car, CNA would give me lame excuses that were not shown anywhere in my insurance policy/contract. Since I was running out of statute of limitations, the Pre-paid Legal Services, Inc. referred me to attorney, Mr. Joseph M. Fredrics, and strongly recommended that I must call him. I was a member of the Pre-paid Legal Services, Inc. I took their advice and called him to represent me in the aforementioned matter.

I was left with no option but to take legal action in Los Angeles County Superior Court, Case No. BC 185353, against the defendants, CNA Casualty of California, a California corporation, and CNA Insurance Companies, a California corporation, for non-payment of repair costs of my vehicle involved in an accident, under the policy issued by the defendants. Instead of honoring their insurance contract, the defendants started using bullying tactics and tried to force me to give up my vehicle to the defendants.

I, had a *suspicion* that the defendants' employees may be making a profit from the unsuspecting innocent insureds' vehicles, that are given up under pressure, by either fixing them and enjoying the vehicles themselves, or by selling them. During the discovery, I found out that this has been their usual practice of '*legally stealing*' their insureds' vehicles under the false pretense of making their insureds' vehicles appear as "total loss" by fraudulently inflating the estimate to repair their vehicles. In a letter from Ms. Chambers to me, it clearly shows how the defendants' employee tries to '*legally steal*' my car by asking me to *"...Also, enclose any keys to the vehicle in the enclosed key envelope."*[3] Their own manual does not list anywhere that

[3] California Supreme Court records (Case No. S 099950) Exhibit Z, last sentence.

the keys to the vehicle be sent to the adjuster. My suspicion was that if, according to the defendants, my car was a total loss, my car was non-repairable, and my car was non-driveable, then why in the world the defendants would want the keys to my car.

In a response given by the defendants:

> *"... We offer to dispose salvage on all of our insured's total loss claims. CNA's salvage is disposed up through a licensed salvor and is not available for purchase by unlicensed salvage dealer's."*[4]

On the contrary, the evidence during the discovery clearly indicated that the defendants are simply *assigning* (not selling) the insureds' vehicles to their *auctioneer* to be *sold* on behalf of the defendants to the **unlicensed** *"individual"* highest bidders *(the salvors)*, thereby fetching the maximum amount of profit from the sale of each of their insureds' vehicles. This will give an idea of the extent of lies, deception and fraud committed by the defendants. In a letter written by the defendants' attorney, Ms. Carner, and faxed to Mr. Fredrics, Ms. Carner clearly admits:

> *"...Nevertheless, whether any CNA employee has purchased a salvaged car is completely irrelevant to the subject matter of the pending litigation between CNA and your clients."*[5]

She is right! I did not allow them to (purchase) *'legally steal'* my car that her clients (defendants) fraudulently called it a *salvage*!

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[4] Court of Appeal of the State of California, Second Appellate District, Division One records (Case No. B 130849) Clerk's Transcript (CT) 389.

[5] California Supreme Court records (Case No. S 099950) Exhibit CC.

This way the insureds feel helpless and give up their vehicles. When I realized that this has been their usual practice, I stood up and fought back. With their financial might, these defendants chose to "*buy*" my attorney and ***a handful of corrupt judges*** instead of litigating this case before a jury. If my case was heard by the jury, there could have been lots of class-action lawsuits brought against these defendants on behalf of unsuspecting innocent victims, the insureds, who may have been bullied by these defendants to give up their vehicles to these defendants.

COURT CORRUPTION SCANDAL INVOLVING MY FORMER ATTORNEY, MR. JOSEPH M. FREDRICS

Taking the advice of the Pre-paid Legal Services, Inc., I called Mr. Fredrics and schedule an appointment to see him on September 19, 1997, to represent me in the aforementioned matter. I gave him all the documents along with numerous pictures and an-hour-long video tape relating to the accident, which he still holds on to them and refuses to return them to me to this date. I also kept on updating the information to him as and when I received them. He reviewed all the documents and told me: "*You were screwed*". In the beginning, Mr. Fredrics made me believe, by his 'sweet-talk', that he wanted to protect my interests in this matter. I signed a written contract on the same day in his office and paid him $3000.00 as his retainer fees.

I had full faith in him that he would do a good job like any other professional. But, when I lost my case after the Superior Court judge granted the motion for summary judgment to the **Defendants CNA Insurance Companies and CNA Casualty of California,** Mr. Fredrics suggested that I file an appeal in this matter. I took his advice and filed an appeal. Once again, I lost the appeal.

This time it made me suspicious about his work. Since in the beginning he told me *that I had a good case and* that I was "*screwed*", then how could I lose twice? I did not know, until his daughter told me, that he was constantly undergoing psychiatric treatment and was on drugs prescribed by his psychiatrist for a long time. I did not give much attention to this information. I decided to go through my files at his office. I was shocked to find so much information, in the boxes that contained my files, that was concealed from me all the time. I became suspicious about the direct link between my former attorney, Mr. Fredrics, and the defendants' attorney, Ms. Carner, as well as the corrupt judges named earlier. It will be quite clear after this Court reviews the entire information submitted to the Supreme Court of the State of California in detail along with all the relevant evidence in the form of various exhibits. ***It is absolutely shocking!***

On December 1, 1998, the defendants' attorney, Ms. Carner, had filed a motion for summary judgment. At the same time, a mediation was arranged by Ms. Carner for December 3, 1998. When Mr. Fredrics received the motion for summary judgment on December 1, 1998, he did not inform me about it at all until during the mediation. I found out in the files that he had communicated with Ms. Carner via fax and lied that I was withdrawing from the mediation without even discussing with me, as evidenced by his billing records. It cost me additional hundreds of dollars.

I kept on insisting to follow-up on the discovery requests, that were timely made, with the defendants. Mr. Fredrics would still find lame excuses not to pursue them by lying to me on December 23, 1998 that "*All discovery had ended.*" The discovery was still open until the first week of January 1999. In addition to the information that I gave him, the information that was already obtained from various sources, besides not telling me, he would intentionally not

introduce them as evidence.[6] He would also refuse to *include the admission portion of the deposition transcript of* one of the defendants' employees, Steven D. Eisner, admitting their fraud; *"The vehicle did not appear to be a total loss"*, which Ms. Carner deliberately suppressed to obstruct justice.

In the motion for summary judgment papers filed by the defendants' attorney, Ms. Carner, as an officer of the court, not only lied and committed perjury, but also suborned her own clients' employees to commit perjury. Although Mr. Fredrics knew all along, he deliberately ignored to address those issues or draw my attention to such unethical and criminal conduct of Ms. Carner.

Mr. Fredrics had hired a staff attorney, Mr. Peter M. Lazarus, about the beginning of December 1998. The response for motion for summary judgment was to be filed within 2 weeks from December 1, 1998. Mr. Fredrics instructs Mr. Lazarus to do so. Mr. Lazarus had to use his imagination and a lot of guesswork in the response. In the response, Mr. Fredrics did not allow any of the documents, that I had given him (in duplicates), and other evidence that were obtained during the discovery process, to be entered into evidence to support my complaint *(evidenced from court records, clerk's transcript and court reporter's transcript)*. He intentionally did not care to draft the expert's declaration in a proper legal format.

Mr. Fredrics accompanied Mr. Lazarus to the hearing for motion for summary judgment on December 30, 1998. Mr. Fredrics' motive is suspiciously still not clear even to this date why he would do so besides costing me additional hundreds of dollars. Mr. Fredrics' only performance, at the

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[6] Court of Appeal of the State of California, Second Appellate District, Division One records (Case No. B 130849) **Reporter's Transcript** (RT) 13, lines 17-20.

hearing, was to introduce himself, and say as if he had received the **Tentative Ruling** to grant the motion for summary judgment (Appendix C; page C2) whereas nowhere in the court records, Clerk's Transcript and/or Civil Register Report (Appendix C; page C10) does it mention anything about the **Tentative Ruling** *ever being written or issued* at all by the trial court judge.

After receiving the ruling from the court, granting the motion for summary judgment, which was quite obvious right from the beginning, Mr. Fredrics advised me to file an appeal. I went along with that idea.

During the appeal phase of the work, Mr. Fredrics did not include as part of the documents to be filed with the Appellate Court, my entire deposition transcript which contained most of the evidence included as various exhibits, as evidenced by the Appellate Court's so-called 'Opinion'. He also intentionally did not include the deposition transcripts of the four employees of the defendants (which I had paid for and cost me thousands of dollars), one of them being Mr. Steven D. Eisner, CNA's appraiser's supervisor, clearly admitting the fraud of the defendants and their employees, which Ms. Carner deliberately suppressed to obstruct justice, as mentioned earlier. The entire appellate work was done by Mr. Fredrics' trainee law clerks and another newly hired staff attorney, Mr. Demetrios Papanikolas, who hardly knew anything about my case, when in the middle of the appellate work, Mr. Lazarus left Mr. Fredrics' law firm.

In Respondent(s)' Brief, Ms. Carner lied, manipulated and contradicted her clients' story many times when the evidence filed by Ms. Carner herself told a different story. Mr. Fredrics knew quite well about it but chose to remain silent on those lies, manipulations and contradictions, once again intentionally weakening my case before the Court of Appeal right from the beginning.

The argument before the appellate court was scheduled for February 16, 2000. On February 17, 2000, the very next day, the Opinion was filed and mailed out to Mr. Fredrics. He received it on February 18, 2000, but did not inform me until I received *only a letter* dated February 22, 2000 from Mr. Papanikolas. (Appendix E; page E9) I received it on February 24, 2000. I called Fredrics' office the same day that I needed the copy of the Opinion. I received it on February 26. In their letter of February 22, 2000 neither Mr. Fredrics nor Mr. Papanikolas advised me of the massive irregularities and inconsistencies in the Opinion (which they were clearly trying to hide from me by deliberately not sending me the copy of the Opinion in the first place), and did not even suggest to me that we can file a Petition for Rehearing. I found out about it from outside sources. I had only until March 3, 2000 to file it. I was left with only one week to do so.

In the Petition for Rehearing, Mr. Fredrics did not even mention about the obvious and serious blatant fraud, irregularities and inconsistencies like the Defendant(s) and Respondent(s) real name(s), the name of counsel of record (Appendix E; pages E4-E8) for the Plaintiffs and Appellants, etc. The petition was denied within 3 business days. (Appendix B; page B10) He received the appellate court's letter dated March 8, 2000, denying the petition, on March 9, 2000. He did not inform me at all about it until I called his office on March 16, 2000, to find out about any response from the defendants. To my surprise he was sitting on the denial for a week. I was left with hardly any time to consult with another competent attorney the possibility of filing an appeal with Supreme Court of the State of California.

The shocking of all the information that I uncovered from my files in the boxes at Mr. Fredrics' office was a *fake document* prepared by and signed by Mr. Fredrics making it appear as if I had given Mr. Fredrics the power of attorney to

sign my name on my behalf on any document, showing a scribbled illegible *fake signature* making it appear as if I had signed that document.[7] One of his former staff attorneys, *Mr. Lee Richard Feldman, sued Mr. Fredrics on August 22,* 2000, BC 235577, alleging in part 'Conversion by Forgery'. I do not know if there is a pattern of such behavior.

He brags that he has "33 YEARS EXPERIENCE WITH INTEGRITY". It is shocking to contradict his false claims and misrepresentations when one looks at the information obtained from the Civil Index and find out how many times he was sued. I do not know if he has enough time on hand to handle his clients' cases with due diligence.

In the beginning, I had no knowledge of the extent of his involvement in this corruption scandal. Later, I realized that he willfully and knowingly fully participated in this corruption scandal. He acted as a protective shield protecting the aforementioned individuals from any reaction from me. He kept me uninformed of such criminal activities that were going on in my absence. The motive of his involvement in this corruption scandal is suspiciously quite obvious.

I have more information that I can provide since it was not possible for me to include every detail in this petition.

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[7] First of all, as long as I am competent, I will never authorize anybody to sign my name on my behalf anywhere or on any document whatsoever. I wonder why an attorney, let alone any person even on drugs, would ever dare to do such a thing. Besides being unethical, the act was illegal and also a crime. Since the damages are unknown, I cannot press charges against him. I have no knowledge where, when and how, if at all, he used this fake document to his advantage.

COURT CORRUPTION SCANDAL INVOLVING THE DEFENDANTS' AND RESPONDENTS' ATTORNEY, MS. GRETCHEN S. CARNER

I respectfully want to draw the attention of this Court that corruption practices still exist in our judicial system involving ***only a handful*** of corrupt judges. I have *discovered* ***corruption scandal within the Court of Appeal of the State of California, Second Appellate District, Division One,*** where Justice Miriam A. Vogel, Presiding Justice Vaino Spencer and Justice Reuben A. Ortega are involved with the help of Defendants' and Respondents' attorney, Ms. Gretchen S. Carner, and her rich and giant insurance corporate clients, CNA Insurance Companies and CNA Casualty of California. Besides corruption scandal, I have also discovered how the same justices and the presiding justice came to the rescue of the Defendants' and Respondents' attorney, Ms. Carner, in *covering-up their own corruption scandal* by preventing her from telling a thousand lies to cover-up each lie that Ms. Carner *fabricated* **(authored)** in her ***scandalous*** **'Opinion'** (Appendix B; pages B1-B9).

I had attached dozens of evidentiary documents (only a small fraction, as the tip of the iceberg) in the form of various exhibits to support my accusations filed with the Supreme Court of the State of California, Case No. S 099950. I still have lots of additional information and boxes full of more evidence.

This entire 'Opinion' is packed with *LIES* that was *authored* by the Defendants' and Respondents' attorney, Ms. Carner, and ***'copied'*** by Justice Miriam A. Vogel of the Court of Appeal, Second Appellate District, Division One, trying to make me believe as if this so-called 'Opinion' was *authored* by Justice Miriam A. Vogel, and concurred and signed by Presiding Justice Vaino Spencer and Justice Reuben A.

Ortega. (Appendix B; page B14) In fact, the Defendants' and Respondents' attorney, Ms. Carner, has left her fingerprints all over ***this serious crime scene***. And, so have the aforementioned ***corrupt justices***.

Not a single word from any page of any of the briefs was read by Justice Miriam A. Vogel, Presiding Justice Vaino Spencer and/or Justice Reuben A. Ortega. Not even a single word from any page from the Clerk's Transcript was read by Justice Miriam A. Vogel, Presiding Justice Vaino Spencer and/or Justice Reuben A. Ortega.

The defendants' attorney, Ms. Carner, was trying her best all along this entire trial to keep one of the defendants' names, **'CNA Insurance Companies'**, out of the courts and public records, as she always mentioned in all her briefs as "also erroneously sued herein as "CNA Insurance Companies"." (Appendix D; pages D1 and D11) She does not even mention what kind of entity CNA Insurance Companies is, nor does she mention in which state or states it is authorized to *legally* operate business. I suspect that these defendants are involved in *racketeering, money laundering, tax evasion, fraud, conspiracy, obstruction of justice, and other white-collared organized serious crimes, etc.* Ms. Carner, as an officer of the Court, would even go to the extent of committing perjury on behalf of the defendants by lying under penalty of perjury by contradicting the Deposition Testimony of Mr. Tony Jimenez, Senior Field Appraiser, that Mr. Jimenez did not work for "CNA Insurance Company", but, instead he worked for CNA ***Casualty of California***. (Appendix D; pageD2, paragraph 3a) Ms. Carner herself has made reference to the Deposition Testimony of Mr. Jimenez (Appendix D; pages D8-D9) in her Declaration which *she signed under penalty of perjury*.

Ms. Carner, as an officer of the Court, has also suborned her clients' (defendants') own employees to commit perjury. She drafted a perjurious Statement of Declaration for Jeffrey Anderson and suborned him to sign such perjurious statement under penalty of perjury[8].

This **entire** 'Opinion' is ***PACKED WITH LIES***!

I will analyze only a couple of pages of this 'Opinion' (due to page limitation of the petition) to give some idea of the extent of courts' involvement in this corruption scandal.

'OPINION'

Appendix B; pages B1-B9
Please refer to page B1 (Page 1 of the 'Opinion')

Justice Miriam A. Vogel of the Appellate Court who *copied* this so-called 'Opinion' *authored* by Ms. Carner that was packed with LIES, used the name of one of the defendants as CNA Casualty ***Company*** of California, *not shown anywhere in court records*, but used only by the Defendants' attorney in (Appendix D; page D11) RESPONDENT'(**S**) BRIEF; (Appendix E; page E4) and confirmed by (Appendix E; page E5); and also (Appendix E; pages E2-E3) in which she herself wrote it *in her own handwriting*. Ms. Carner herself forgot that there is no such entity in the State of California, or anywhere in the United States, by the name of CNA Casualty ***Company*** of California. Justice Vogel, who *simply copied* the 'Opinion' that was *authored* by Ms. Carner totally ignored the name of one of the Defendants, 'CNA Insurance Companies' which is officially stated on all past and present court records (Appendix B; pages B10-B15; Appendix C;

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[8] Court of Appeal of the State of California, Second Appellate District, Division One records (Case No. B 130849) Clerk's Transcript (CT) 327-332. California Supreme Court records (Case No. S 099950) Exhibit FF.

pages C6, C11; Appendix D; page D10; Appendix E; pages E1, E4, E6; and Appendix F; page F1) including but not limited to the Clerk's Transcript. The names of the Defendants and Respondents suddenly changed on the 'Opinion' of the Appellate Court.

On the 'Opinion', the case tittle should have read, as shown on the Clerk's Transcript, as:

KENNETH K. CHEMI & ARMAITY CHEMI

Plaintiff(s) and APPELLANTS

vs.

CNA INSURANCE COMPANIES, a Calif. Corp., et al.

Defendant(s) and RESPONDENTS

Surprisingly, not only the name of '**CNA INSURANCE COMPANIES, a Calif. Corp.**' has been eliminated, but also the name of CNA Casualty ***Company*** of California, *which does not even exist in the State of California,* is shown on the 'Opinion' as if it was the *only* Defendant and Respondent in this case! (Appendix C; page C11) There is no such entity by the name of *CNA Casualty Company of California* in the State of California or anywhere in the United States, clearly indicating that this so-called 'Opinion' was, in fact, *authored* by the Defendants' and Respondents' attorney, Ms. Carner, and *simply 'copied'* by Justice Vogel. The name "*CNA Casualty Company of California*" was an imaginary

creation of Ms. Carner's fantasy as a result of her huge blunders of constantly lying, manipulating and contradicting her own fraudulent story throughout the trial (Appendix C; page C2).

My attorneys' names shown on the 'Opinion' were not even of record. The **Appellants' Reply Brief**[9] clearly shows the names of current attorneys of record. This clearly indicates that this 'Opinion' was authored *long before* the defendants' attorney, Ms. Carner, had a chance to see the names of my current attorneys of record stated on the Appellants' Reply Brief, which will also be proved by Appendix E; pages E6-E8. The only time Ms. Carner received the Appellants' Reply Brief was while she was still in the middle of *authoring* the so-called 'DISCUSSION' portion of the ***scandalous*** **'Opinion'** (Appendix B; page B13). But, she was lazy enough not to go back and change the information to make it appear, at least, more authentic. She goofed! She thought that she would never be caught by the blessings of Mr. Fredrics.

The amazing thing about this ***scandalous*** **'Opinion'** is that it was filed within 24 hours of the hearing! The cause was argued and submitted - **not decided** - on February 16, 2000 (Appendix B; page B14). And the 'Opinion' was filed on February 17, 2000, the very next day! Within 24 hours, the justices, especially Justice Miriam A. Vogel, had a chance to review almost 700 pages of the documents filed with the Appellate Court, do research on case laws, dictate the 'Opinion', get it typed, and also get the 'Opinion' filed!

In all, there were ***10 causes*** heard on February 16, 2000. Out of these *10 causes*, Justice Vogel was '*able*' to '*author*' ***4 Opinions***[10], including this ***scandalous*** **'Opinion'**

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[9] California Supreme Court records (Case No. S 099950) Exhibit WW.

[10] California Supreme Court records (Case No. S 099950) Exhibits WWW, XXX, YYY and ZZZ.

about my cause (Appendix B; pages B1-B9), *by the very next day,* and also get them filed! *Her trick is very simple.* Allow only *one* Opinion to be published, and leave the rest of the Opinions unpublished. Under such shroud of secrecy, not even other litigating attorneys would ever find out how many Opinions she really *authored* and which 'Opinion' she really *copied* that was *authored and supplied* by the Defendants' and Respondents' attorney, Ms. Carner.

'OPINION'

Appendix B; pages B1-B9
Please refer to page B2 (Page 2 of the 'Opinion')

Paragraph 1:

Lines 3-5:

> *"The insured wanted to repair the car, obtained other estimates, and had the car repaired – but did not tell the insurer."*

Response: LIES! CNA's File Activities Report, Apr. 4, 1997; Clerk's Transcript (CT) 356 *"...BUT WE COULD NOT AND WOULD NOT NEGOTIATE ON VEH REPAIRS"*

If the justices had really read the Clerk's Transcript at all, especially this File Note, they would have come to the conclusion that it was the defendants (insurer) who did not want to discuss about the vehicle repairs. The defendants (insurer) were adamant about not having me (insured) repair the car but wanted my car by force. *In fact CNA was notified on June 11, 1997 at 3:42:33 PM by the gentleman named Manny from the fraud division of the Department of Insurance* (CT 351-352) *that the car had been repaired.* It was the defendants who said in the same note (CT 352):

"We do not have any reason to believe that this vehicle could have been completely repaired for this amount, given that our estimate was for visible damage only, and there were open items listed on the estimate."

There were no open items listed on the estimate. CT 115–119. This clearly shows that the defendants' attorney, Ms. Carner, was trying to hide the facts that were already in the court's records, when she *authored* her so-called 'Opinion', which Justice Vogel *simply* '*copied*'. This also corroborates my claim that these handful of corrupt justices did not even bother to read a single word form the Clerk's Transcript.

Lines 5-8:

*"When the insured retained '**a lawyer**' and the insurer was notified about the other estimates, the insurer reconsidered, agreed that the car had been properly repaired, and issued a new check. The insured nevertheless sued the insurer for bad faith and other things."*

Response: LIES! CT 381- 382. Please refer to CT 382, Paragraph 3. My first attorney, Mr. Thomas Waddell, in his letter was trying to *resolve* the problem without any litigation at all, in which he clearly states:

"...At this point Mr. Chemi simply wishes to be reimbursed for the $4418.71 which he has spent repairing the vehicle. ... Frankly, I am at a loss to explain why your appraiser would estimate repairs at approximately two and a half times the four other estimates made plus the repair bill itself. In any event, if the $4418.71 is not paid to Mr. Chemi forthwith, he intends to take further legal action to protect his interests."

It would not have cost any of the parties even a penny if the defendants would have simply paid the said amount according to the policy. CT 113, Paragraph 1. In response to Mr. Waddell's letter, CT 383, Paragraph 5, the defendants wrote to me:

> *"... Although you believe that your vehicle can be properly repaired based upon the estimates that you have obtained, it remains our position that our estimate reflects a proper and complete repair. ..."*

Defendants are still refusing to pay the repair cost.

My second lawyer, Mr. Richard Tanzer, was hired to *resolve* the same ongoing problem, once again *without any litigation*. Respondent(s)' Brief; page 9, paragraph 4:

> *"On August 5, 1997, attorney Richard Tanzer sent a letter to Mr. Anderson advising that he had been retained by the Chemis to assist in the resolution of their claim."*

Still the defendants refused to honor the insurance policy. This time it cost me $1000. This corroborates my claim that these handful of corrupt justices did not even bother to read the Respondent's Brief written by Ms. Carner.

I, who was left helpless by the defendants, had to hire the third lawyer, Mr. Joseph M. Fredrics. This time I had no choice but to sue the defendants if they still refused to honor the contract, CT 113; paragraph 1, because the statute of limitations was running out. Even after the defendants admitted their own appraiser's fraud in appraising the repair costs, they would bring out all kinds of clauses (lame excuses), that could not be found anywhere in the contract, or anywhere in the Clerk's Transcript, as a matter of fact, purposely in order for the statute of limitations to run out. The defendants issued a check only

after they were sued, and that too, days after they were served with the lawsuit. Therefore, I had to sue the defendants *for bad faith and other things*. This time it cost me thousands of dollars.

It is apparent that Justice Miriam A. Vogel who claims to have *authored* this so-called 'Opinion' is contradicting her own words on pages 4 through 7 of this 'Opinion' (Appendix B; pages B4-B7) where she mentions the names of three lawyers *(not just "a lawyer")* clearly showing as if she is suffering from short-term memory loss. In fact, it is Ms. Carner, who *authored* this so-called 'Opinion', which was *copied* by Justice Vogel, has a habit of suffering from short-term memory loss, which is evident from her RESPONDENT'S BRIEF, in which she herself contradicts her own story from the very first page onwards. Examples of her lies, manipulations and contradictions are described in somewhat detail in the records with California Supreme Court, Case No. S 099950.

Lines 8-9:

> *"The trial court granted the insurer's motion for summary judgment."*

I had no idea what was going on among my former attorney, Mr. Fredrics, the defendants' attorney, Ms. Carner, and the Los Angeles County Superior Court (trial court) Judge Wendell R. Mortimer, Jr. during the Motion for Summary Judgment phase of the trial.

After I read the Reporter's Transcript, I realized that the first few pages clearly indicated that it was carefully scripted and rehearsed before the hearing.

Appendix C; page C2 will show that the clerk is asking a question in a *singular* form proving that the clerk is referring to only *one counsel*: *"DOES COUNSEL HAVE THE*

TENTATIVE RULING OF THE COURT?" The response came only from my former attorney, Mr. Fredrics: *"YES, WE DO."*, referring to himself and his staff attorney, Mr. Peter M. Lazarus. No response is on record showing whether or not Ms. Carner even had the **Tentative Ruling** of the court at all. It seems as if Ms. Carner already had the **Tentative Ruling** of the court in advance. It is even beyond that. If she did not have the **Tentative Ruling**, how would she know what is contained in the so-called **Tentative Ruling**, and, how would she proceed without that knowledge? Appendix C; page C4, and please compare with Appendix C; page C10.

Appendix C; page C2 shows that the trial court Judge Wendell R. Mortimer, Jr., without uttering any words to be caught on record, takes the so-called ***TENTATIVE RULING*** back from Mr. Lazarus stating that *"THAT'S MY CHEAT-SHEET"*. Nowhere can anyone find in Appendix C; pages C6-C12 (Civil Register Report), especially Page C10, that such a ***TENTATIVE RULING*** was ever written or issued by the court. By reading the previous paragraph it can be concluded that this ***TENTATIVE RULING*** *may* have been written by the defendants' attorney, Ms. Carner, who could proceed with the hearing ***without any knowledge of the contents of the Tentative Ruling***. Appendix C; page C4: *"NO. I'D LIKE TO SUBMIT ON THE TENTATIVE, YOUR HONOR."* It is a clear indication of an unlawful secret ex parte communication of the litigating defendants' attorney, Ms. Carner, with trial court Judge Wendell R. Mortimer, Jr.

After handing over the so-called **Tentative Ruling** back to Judge Wendell R. Mortimer, Jr., Mr. Lazarus had to recall from his memory at a glance what it really contained in order to continue; Appendix C; page C3:

> *"I BELIEVE ON THE FIRST POINT ON YOUR **TENTATIVE**, YOUR HONOR, IT HAD TO DO WITH THE EXPERT'S DECLARATION, AND THEN THERE IS A*

DISCUSSION FROM THE COURT CONCERNING THE EVIDENCE SUBMITTED OPPOSING THE MOTION."

And the court confirms his guesswork by saying: "*RIGHT*."! Mr. Lazarus, now, has to guess what the *DISCUSSION FROM THE COURT* contained, if at all he could remember. Whatever happened to the other remaining "*POINTS*" besides *THE FIRST POINT* on the ***TENTATIVE***?

This entire hearing was a mockery of our judicial system right from the beginning. It was nothing but a FRAUD committed by the trial court and the perpetrators named above. Also, please read Appendix C; page C5: "*SHE'S GIGGLING*".

Even to this date, Mr. Lazarus does not know about this scandal, because he was never involved in it.

The entire analysis of the "*granting of the motion for summary judgment*" is explained in somewhat detail in the records with California Supreme Court, Case No. S 099950.

'OPINION'

Appendix B; pages B1-B9

Please refer to page B2 (Page 2 of the 'Opinion')

Instead of "***FACTS***" the title should read "***LIES***"

Paragraph 2:

Lines 1-5:

> *"On March 20, 1997, an uninsured "elderly lady driving on a suspended license and apparently* ***under the influence of alcohol****" crashed into a 1993 Nissan Altima owned by Kenneth and Armaity Chemi, financed by Nissan Motors Acceptance Corporation, and insured by CNA Casualty* ***Company*** *of California.[1]"*

Response: How did the justice and/or justices know that the elderly lady was ***"under the influence of alcohol"***? Nowhere in the Clerk's Transcript or in any briefs filed with the Appellate Court, can one find such a statement. Nowhere can one find, in court records, any police/accident report suggesting that the elderly lady was under the influence of alcohol. And, once again, the defendants' and respondents' attorney goofed by stating *"... and insured by CNA Casualty **Company** of California."* This was not a typographical error but proof of repeated constant lying. Once again, there is no such entity by the name of *CNA Casualty **Company** of California* in the State of California or anywhere in the United States, clearly indicating that this so-called 'Opinion' was, in fact, *authored* by the Defendants' and Respondents' attorney, Ms. Carner, and *simply* '*copied*' by Justice Vogel, as mentioned earlier. The name "*CNA Casualty **Company** of California*" was an imaginary creation of Ms. Carner's fantasy as a result of her huge blunders of constantly lying, manipulating and contradicting her own fraudulent story throughout the trial. Appendix C; pages C1 and C2.

A lot more detail information about this **entire *scandalous*** **'Opinion'** can be found in the records filed with the California Supreme Court, Case No. S 099950, that will prove that every page of this **'Opinion'** is packed with lies!

Please see Appendix B; page B11. Ms. Carner realized how she goofed by not including in this ***scandalous*** **'Opinion'** the phrase "Respondent(s) to recover costs". In order to appease the Defendants/Respondents and Ms. Carner, the Deputy Clerk, Ms. Joyce Hatter, a non-judicial authority, who wrote and filed the **"REMITTITUR"**, was delegated the role of a judicial authority to instruct the trial court: *"Respondent(s) to recover costs"* when nowhere in this **'Opinion'** does it say so! It appears that the scandal never ends. My question to these justices is: Who, in fact, ***is or are*** the real Respondent**(s)**?

As an officer of the court and the custodian of court records, Mr. Lane, Clerk of the Court of Appeal, Second Appellate District, in his letter of February 16, 2001 *(one year after filing the **'Opinion'**)*, while trying to protect and cover-up their corruption scandal, inadvertently exposed these **corrupt justices** of their blatant **LIES** by revealing the obvious truth, e.g., the real name**(s)** of the Defendant**(s)** and Respondent**(s)** (CNA ***Insurance Companies***, **et al**), that the court records contained at all times. Appendix F; page F1.

I have a strong suspicion that besides this corruption scandal, Justice Miriam A. Vogel, Presiding Justice Vaino Spencer and Justice Reuben A. Ortega, may also have conspired in aiding and abetting the Defendants and Respondents, CNA Insurance Companies and CNA Casualty of California, the Defendants' attorney, Ms. Carner, "and others" in *racketeering, money laundering, tax evasion, fraud, conspiracy, obstruction of justice, and other white-collared organized serious crimes, etc.* These organized criminals have to be investigated and brought to justice.

After reviewing the detail overwhelming, clear, convincing and unequivocal, as well as shocking evidence, I am sure that this Court will be convinced beyond any and all reasonable doubts that this ***scandalous*** **'Opinion'** issued by the ***Pseudo*** **Court of Appeal** was not only obtained by means of fraud, but it is also **an excellent masterpiece of massive judicial fraud with criminal mischief written all over it!**

REASONS FOR GRANTING THE WRIT

A

This Court must decide whether the lower courts had the lawful authority under the Constitution to delegate their judicial discretionary powers and responsibility by means of secret ex parte communications to the litigating counsel of record for the defendants and respondents.

I am sure that this Court is convinced beyond any and all reasonable doubts that the ***scandalous*** **'Opinion'** was ***unlawfully decided*** by the litigating Defendants' and Respondents' attorney, Ms. Gretchen S. Carner, for and on behalf of Justice Miriam A. Vogel, Presiding Justice Vaino Spencer and Justice Reuben A. Ortega of the Court of Appeal, Second Appellate District, Division One, in the above named matter, ***as their alter ego, creating a Pseudo Court of Appeal.***

I am also sure that this Court is convinced beyond any and all reasonable doubts that the ***scandalous*** **'Opinion'** was ***unlawfully authored*** by the litigating defendants' and respondents' attorney, Ms. Gretchen S. Carner, for and on behalf of Justice Miriam A. Vogel, in the above named matter, pretending as if Justice Miriam A. Vogel authored it, ***as her alter ego, creating a Pseudo Court of Appeal.***

I am, once again, sure that this Court is convinced beyond any and all reasonable doubts that the **Tentative Ruling** was **secretly and unlawfully written** by the litigating defendants' attorney, Ms. Gretchen S. Carner, for and on behalf of Judge Wendell R. Mortimer, Jr. of the Superior Court of the State of California for the County of Los Angeles in the above named matter. The ruling of Judge Mortimer granting defendants' motion for summary judgment was a result of a ***mockery of our judicial system*** and ***judicial mischief*** right from the beginning. It was nothing but a ***FRAUD*** committed by the trial court and the aforementioned perpetrators.

B

This Court must decide whether the scales of justice of the lower courts' judicial discretion of Due Process Clause of the Fourteenth Amendment tilted in favor of THE RICH AND WELL- CONNECTED

The traditional notions of fair play and substantial justice as guaranteed by the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States changed in light of the financial strength of the defendants and respondents. My case was not an isolated incident.

A *homeless lady* by the name of Jacqueline Richardson, believing in our ***fair*** system of justice that would protect her rights, stood up against a giant corporation, The Aerospace Corporation, (Court of Appeal No. B 128726; Superior Court No. BC 183701). She argued her cause, *in propria persona*, on the same day, **February 16, 2000**, just before my cause was argued. If one reads her case, it will be clear how her rights were trampled like trash. Another example of *tilted scales of justice*. The unpublished Opinion of her cause, which was filed on **February 17, 2000**, was also authored by the same Justice Miriam A. Vogel who claims to have ***authored*** the ***scandalous*** **'Opinion'** of my cause. Maybe, there is a pattern of such behavior. Others may be out there, victimized by such a system of *tilted scales of justice*, who are denied due process as guaranteed by the Fourteenth Amendment to the Constitution.

During my investigation into this corruption scandal, I uncovered a sophisticated network of high profile individuals and organizations having Los Angeles, San Francisco and Sacramento connections.

The exercise of this Court's supervisory jurisdiction is warranted over the gross limitation of due process rights implicated by the aforementioned court decisions.

C

This Court must decide whether the Supreme Court of the State of California looked the other way and allowed the court corruption scandal to be covered-up

The question placed before this Court is: Should the **'Opinion'** issued by such ***Pseudo*** **Court of Appeal** under such ***scandalous*** conditions, described earlier, be considered void? According to the earlier decision of this Court, it should be considered void.

The ***Pseudo*** **Court of Appeal** has no integrity. The justices of such ***Pseudo*** **Court of Appeal** who signed their names on the ***scandalous*** **'Opinion'** have no integrity. And, therefore, the ***scandalous*** **'Opinion'** has no integrity.

If this Court believes that the **'Opinion'** issued by such ***Pseudo*** **Court of Appeal** under such ***scandalous*** conditions, described earlier, should be considered void, then this Court should invalidate this ***scandalous*** **'Opinion'** altogether, vacate the judgment and remand the case to the Superior Court of the State of California for the County of Los Angeles for a jury trial *before a different judge*.

Although I alerted the Supreme Court of the State of California about this court corruption scandal, by denying *en banc* the court chose not to take any action after sitting on my petition for ***over seven (7) months***, and looked the other way as if it never happened. The very fact that the respondents, by not responding, chose not to contest any of my accusations should have triggered a review of my petition by the Supreme Court of the State of California.

Furthermore, the Court of Appeal committed *mail fraud* by using the United States Postal Service to mail a fraudulent document, the ***scandalous*** **'Opinion'**. Their action, besides being against public policy, will have a chilling effect of eroding public confidence in our system of justice.

D

This Court must decide the issue of Statute of Limitations for filing a petition for review of a court's decision which is obtained by means of fraud, and is void, when the Supreme Court of the State of California looked the other way and totally ignored it.

Another question before this Court is: What is the statute of limitations for filing a petition for review of a court's decision when it can be proved that such court's decision is void because it was obtained by means of fraud?

Once this Court believes that the **'Opinion'** issued by such ***Pseudo*** **Court of Appeal** under such ***scandalous*** conditions, as described earlier, should be considered void, then this Court should now make a very important decision in the absence of any rule under the California Rules of Court that should have addressed the issue of statute of limitations for filing a petition for review of a court's decision that is void. This Court should act now to restore certainty to the statute of limitations in such scandalous cases and avoid the unfairness that result from fraudulent decisions from such lower courts. The law should be more predictable to protect the rights of all parties concerned.

The theory of such a case is that if a court's decision is void, it means that no disposition of the case has been made and therefore the decision does not exist. If such a decision does not exist, then how can one continue to act in furtherance of the shape and form of its contents?

I deserve help from this Court, and so does the confusing and contradictory law said to govern this unfortunate field. Perhaps more important, so does the integrity and precedential worth of this Court's ***"any court decision obtained by means of fraud is void"*** holding.

CONCLUSION

The *en banc* denial of the Supreme Court of the State of California is a denial of due process as guaranteed by the Fourteenth Amendment to the Constitution. It also creates conflicts in several areas of the law, including the scope of a proper exercise of judicial discretion as to "rights" established by statute. By intervening, this Court will be able to settle important issues of law, maintain its own authority, and ensure uniformity of decision.

I, petitioner, Kenneth K. Chemi, *pro se*, respectfully pray that this Court should grant my Petition for Writ of Certiorari and review the aforementioned accusations, and then invalidate the decision of the Court of Appeal of the State of California, Second Appellate District, Division One, as well as the decision of the Superior Court of the State of California for the County of Los Angeles, and remand the case to the Superior Court for a jury trial *before a different judge*.

This Court must also decide if the actions of the aforementioned attorneys, as well as the judges named above are culpable for their roles in such serious crimes, and revoke their licenses to practice law with permanent disbarment, with directions for further investigation, because this straight-forward bad faith civil lawsuit, the **'Opinion'** of which has turned into **a serious crime scene** perpetrated by the partners-in-crime and co-conspirators named above.

I am entitled to a jury trial to prove my claims.

Respectfully submitted,

Kenneth K. Chemi
Pro Se
2204 Shreve Avenue
Simi Valley, California 93063
(805) 522-9272

APPENDIX A

S099950

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re the Accusation of KENNETH L. CHEMI Against an Attorney.

Petition DENIED.

Brown, J., was absent and did not participate.

SUPREME COURT
FILED

MAR 20 2002

Frederick K. Ohlrich Clerk

DEPUTY

/s/ George

Chief Justice

APPENDIX B

(Cause Argued and Submitted *February 16*, 2000)

(Decided and Filed *February 17*, 2000)

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

KENNETH K. CHEMI et al.,	B130849
Plaintiffs and Appellants,	(Super. Ct. No. BC185353)
v.	
CNA *CASUALTY COMPANY* OF CALIFORNIA,	
Defendant and ***Respondent***.	

APPEAL from a judgment of the Superior Court of Los Angeles County, Wendell Mortimer, Jr., Judge. Affirmed.

Law offices of Joseph M. Fredrics, Joseph M. Fredrics, Peter M. Lazarus and Michael T. Carr for Plaintiffs and Appellants.

Luce, Forward, Hamilton & Scripps and Gretchen S. Carner for ***Defendant*** and ***Respondent***.

An insurance company was notified that its insured's car had been hit by an uninsured motorist. The insurer investigated, determined the car was a total loss, and paid the actual cash value required by the policy. The insured wanted to repair the car, obtained other estimates, and had the car repaired -- but did not tell the insurer. When the insured retained a lawyer and the insurer reconsidered, agreed that the car had been properly repaired, and issued a new check. The insured nevertheless sued the insurer for bad faith and other things. The trial court granted the insurer's motion for summary judgment. We affirm.

FACTS

On March 20, 1997, an uninsured "elderly lady driving on a suspended license and apparently under the influence of alcohol" crashed into a 1993 Nissan Altima owned by Kenneth and Armaity Chemi, financed by Nissan Motors Acceptance Corporation, and insured by CNA ***Casualty Company*** of California.[1] Chemi notified CNA. CNA in turn, sent an appraiser to inspect the damage, and he estimated the repairs would cost about $11,150. At CNA's request, an independent appraiser fixed the actual cash value of the Nissan at $10,675. Based on the terms of Chemi's CNA policy -- which entitled Chemi to the *lesser* of (1) the actual cash valued of the damaged car or (2) the amount it would cost to repair it -- CNA's claims adjuster told Chemi that CNA would pay $11,555 (actual cash value plus sales tax) to settle the claim as a total loss.

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[1] Since Mr. Chemi was the one who handled the claim, our subsequent references are to him alone but are intended to include Mrs. Chemi.

A few days later, Chemi called CNA to demand that CNA pay for the cost of repairs. Chemi spoke first with Jeffrey Anderson (to whom Chemi complained about the claims adjuster), then refused to speak to Anderson and talked instead to a regional claims manager. On April 2, Anderson wrote to Chemi, explaining the terms of Chemi's insurance policy and the manner in which CNA's estimates had been calculated. Chemi was given two options: (1) to treat the vehicle as salvage (in which event CNA would dispose of it), with CNA paying to Chemi the sum of $11,305.69 (actual cash value, plus sales tax, less Chemi's deductible), or (2) to retain the vehicle (in which event CNA would be required to notify the Department of Motor Vehicles and a Salvage Certificate would be issued) and to accept from CNA the sum of $6,750 (actual cash value, less salvage value, less Chemi's deductible). Chemi was advised that his selection of the second option could affect his future ability to obtain insurance and that it might also affect the rights of the lienholder (Nissan Motors Acceptance).

After talking to Chemi on April 3, Anderson sent two checks to Chemi, one for $7,000 (actual cash value less salvage value, with the deductible waived), the other for $1,200 (to reimburse Chemi for the cost of the rental he had obtained following the accident). In a cover letter, Anderson listed for Chemi the steps that Chemi could take if he was dissatisfied with the manner in which the claim had been resolved. As required by law, CNA notified the Department of Motor Vehicles that Chemi had retained possession of a "total loss salvage vehicle," and Anderson enclosed with his letter to a "certificate of salvage retention" reciting the terms

of Vehicle Code section 11515, subdivision (b).[2]

Chemi did not follow any of the steps outlined in Anderson's letter or in his policy, but instead complained to the Department of Insurance. On April 29, the Department of Insurance notified CNA that it had received a complaint from Chemi about his claim. As requested by the Department of Insurance, CNA responded to Chemi's charges (to Chemi, with a copy to the Department of Insurance). The Department of Insurance found there were no violations or irregularities.

Chemi contacted a lawyer (Thomas Waddell) who wrote to CNA, complaining that the estimate made by CNA's appraiser was "greatly at odds with other estimates" obtained by Chemi. According to Waddell, Chemi had "four independent estimates for repair" ranging from $4,300 to $5,100 (but no copies were enclosed) and Chemi had, in fact, had the car repaired "at a total cost of $4,418.71. He says the car operates fine, and that he is perfectly happy with the repairs. Mr. Chemi says that he has copies of the four repair estimates plus the actual repair bill along with the evidence

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[2] According to the form, the statute provides that, "[w]henever the owner of a total loss salvage vehicle retains possession of the vehicle, the insurance company shall notify the California Department of Motor Vehicles of the retention on a form prescribed by the Department. The insurance company shall also notify the insured or owner of the insured's or owner's responsibility to comply with the subdivision. The owner shall within 10 days from the settlement of the loss, forward the properly endorsed Certificate of Ownership or other evidence of ownership acceptable to the Department, the license plates, and the three dollar ($3) fee to the Department. The Department, upon receipt of the Certificate of Ownership and other evidence of title, the license plates and three dollar ($3) fee, shall issue a Salvage Certificate for the vehicle. Violation of this Vehicle Code requirement is a misdemeanor." (Veh. Code, § 11515, subd. (b).)

of his credit card payment of the repair bill. [¶] However, he indicates that he has not been able to get anybody at your company to listen to him so that his version of this matter can be explained."

The letter concluded this way: "At this point Mr. Chemi simply wishes to be reimbursed for the $4,418.71 which he has spent repairing the vehicle. He will be happy to return to you the $7,000 draft which you previously sent him. Incidentally, he continues to make payments on this car, and these payments will be completed by January of 1998. Frankly, I am at a loss to explain why your appraiser would estimate repairs at approximately two and a half times the four other estimates made plus the repair bill itself. In any event, if the $4,418.71 is not paid to Mr. Chemi forthwith, he intends to take further legal action to protect his interest." Waddell told CNA that it could contact Chemi directly about this matter since Waddell had not undertaken to represent Chemi.

On July 17, Anderson wrote to Chemi about Waddell's letter, confirming CNA's view that the car was properly treated as a "constructive total loss" and that, in light of its independently appraised value. CNA's decision was that it should not be repaired. Anderson pointed out that Waddell's letter was the first CNA had heard about other estimates purportedly obtained by Chemi, and that the only estimate CNA had yet to see was its own.

Chemi contacted another lawyer, Richard Tanzer, who wrote to Anderson on August 5, explaining further that "Mr. Chemi did not simply secure four estimates ranging between $4,300 and $5,100 on the vehicle. He went ahead and repaired the vehicle at a cost of $4,418.71. He is presently driving the vehicle and believes that it is in the same (excellent) condition as it was before the accident.

He is holding the check which you sent him in the approximate sum of $7,000 because that check was made payable to him and to the lender and because he believes that negotiating the check will render his vehicle unusable because it will be considered "a salvaged car" and therefore not insurable." Tanzer asked Anderson to call him.

On August 6, Anderson told Tanzer that CNA was willing to reconsider its position, asked Tanzer to send him copies of the four repair estimates obtained by Chemi, asked Tanzer to obtain confirmation from the lienholder (Nissan Motors Acceptance) that it was satisfied with Chemi's repairs, and requested permission to examine the Nissan to see for itself that the repairs were properly made. On August 8, Tanzer sent copies of the estimates to Anderson and said that Chemi would contact the lienholder about its requirements. On August 15, CNA reviewed Chemi's estimates and concluded that the original repair estimate "appear[ed] to have been . . . overwritten." On September 10, Tanzer wrote to Anderson to say that Chemi would personally pay the balance due on the car (so the lien could be released), and to ask Anderson to arrange for an independent inspection of the car. The inspection was arranged and conducted, and CNA was satisfied with the work.

On September 23, CNA wrote to the DMV to explain that, upon further examination of the damages sustained by Chemi's car, CNA had determined that the vehicle was in fact repairable and not a constructive total loss, and that it had, in fact been properly repaired. CNA said its initial notification was premature and, under the circumstances, not applicable.

Chemi changed lawyers again and, on October 24, Anderson received a telephone call from Joseph Fredrics to say he had been retained by Chemi to obtain payment of his claim. The same day, Anderson wrote to Fredrics, explaining that CNA was awaiting confirmation from the lienholder that its interest had been released, at which point a new settlement check would be issued. On December 23, Anderson wrote again to Fredrics to explain that CNA had yet to receive the required release from the lienholder and to assure Fredrics that, upon receipt of that release, CNA would issue a check to Chemi for $4,418.71.

On February 3, Chemi (represented by Fredrics) sued CNA, alleging causes of action for breach of contract, breach of an implied covenant of good faith and fair dealing, fraud, and intentional infliction of emotional distress. On February 10, CNA wrote again to the DMV to confirm that Chemi's car was not, in fact, a "total loss" or otherwise to be treated as salvage. On February 27, CNA wrote to Fredrics, explaining (1) that no response had been received from Fredrics or his client concerning CNA's efforts to resolve Chemi's claim, (2) that CNA had contacted the lienholder and determined that Chemi had personally satisfied the lien to the lienholder's satisfaction, (3) that CNA was therefore enclosing its check in the amount of $4,418.71 to reimburse Chemi for the repairs made to the Nissan, and (4) that the DMV had confirmed to CNA that Chemi's Nissan would *not* be treated as a salvaged vehicle.

Chemi nevertheless went forward with his lawsuit against CNA. CNA answered, conducted discovery, then moved for summary judgment, supporting its motion with evidence of the facts summarized above. Over

Chemi's opposition, the motion was granted. Chemi appeals form the judgment thereafter entered.

DISCUSSION

In a two-page argument, Chemi contends that a declaration offered in opposition to CNA's motion for summary judgment constituted competent evidence sufficient to create a triable issue of material fact. The declaration is signed be Edward Godwin, "a licensed claims adjuster" whose expertise is not stated and whose curriculum vitae, although attached, is not incorporated by reference into the declaration. Godwin does not purport to have personal knowledge of any relevant fact. He does not say anything about the custom or practice in the industry or that he even knows what they are. The trial court said the testimony presented by the declaration did not qualify as expert testimony and that Godwin was incompetent to present an opinion. Although Chemi attempted in his reply papers to cure the problems with Godwin's declaration, that effort came too late. (Code Civ. Proc., § 437c, subd. (b); *California Shoppers, Inc.* v. *Royal Globe Ins. Co.* (1985) 175 Cal.App.3d 1, 66-67.) Of course, there is also the fact that Godwin's declaration directly contradicts Chemi's deposition testimony (which Godwin did not read).

It adds nothing if we assume the trial court was mistaken about the admissibility of the declaration -- since Chemi has failed altogether to explain the prejudice caused by the exclusion of the declaration. Instead, Chemi ignores most of the rules governing this appeal and appears to assume that an evidentiary error is sufficient, in itself, to require reversal. That is not how it works. A judgment is presumptively correct and will be reversed only upon a

showing of prejudicial error. (Code Civ. Proc., § 475; *Pool* v. *City of Oakland* (1986) 42 Cal.3d 1051, 1069; *Denham* v. *Superior Court* (1970) 2 Cal.3d 557, 564; *Jacques Interiors* v. *Petrak* (1987) 188 Cal.App.3d 1363, 1369.) Assuming error, Chemi's failure to show prejudice is fatal to his appeal.[3]

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

/s/ Vogel
VOGEL (Miriam A.), J.

We concur:

/s/ Spencer
SPENCER, P. J.

/s/ Ortega
ORTEGA, J.

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[3] In his appellant's reply brief, Chemi says (again) that Godwin's declaration should have been admitted and (for the first time) suggests that Godwin's testimony was important because it showed that CNA's conduct was unreasonable. Leaving to one side the fact that an issue (prejudice) cannot be raised for the first time in a reply brief (*Akins* v. *State of California* (1998) 61 Cal.App.4th 1, 17, fn. 9), this argument is inconsistent with Chemi's equally tardy claim that his own testimony (which he did not designate as part of the record on appeal) is sufficient to create a triable issue of fact about the reasonableness of CNA's conduct. Assuming that Chemi's self-contradictory testimony *could* be sufficient, this issue was waived by his failure to raise it in his opening brief and it is in any event unavailing. As a matter of law, the uncontroverted evidence in this case shows that CNA acted reasonably.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION 1

DATE: March 8, 2000

Peter M. Lazarus
Law offices of Joseph M. Fredrics
3700 Wilshire Blvd.
Suite 740
Los Angeles, CA 90010

Kenneth & Armaity Chemi
v.
CNA Insurance Companies

B130849
Los Angeles County No. BC185353

THE COURT:

Appellants' petition for rehearing is denied.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
JOSEPH A. LANE, CLERK

DIVISION 1

Los Angeles County Superior Court
111 North Hill Street
Los Angeles, CA 90012

Kenneth & Armaity Chemi
v.
CNA Insurance Companies
B130849
Los Angeles County No. BC185353

***** REMITTITUR *****

I, Joseph A. Lane, Clerk of the Court of Appeal of the State of California, for the Second Appellate District, do hereby certify that the attached is a true and correct copy of the original order, opinion or decision entered in the above-entitled cause on February 17, 2000 and that this order, opinion or decision has now become final.

Respondent(s) to recover costs.

Witness my hand and the seal of the Court affixed at my office this APR 25 2000

Joseph A. Lane, Clerk

by: /s/ J. Hatter
Deputy Clerk

cc: All Counsel
File

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOR THE SECOND APPELLATE DISTRICT
DIVISION 1

Kenneth & Armaity Chemi
v.
CNA Insurance Companies

CASE NUMBER:	B130849
NOA/PET DATE:	03/30/99
STATUS:	Complete
PRIORITY:	Standard processing
CAUSE:	Appeal
CASE TYPE:	Civil
DISP DATE:	02/17/00
FINAL DISP:	Affirmed in full
ORIGIN:	Received from superior court
CATEGORY:	civo Civil Complaints - other

TRIAL COURT INFORMATION

Case No.:	BC185353
County:	Los Angeles
Court:	Los Angeles County Superior Court
Judge:	Mortimer, Wendell
Jud. Date:	01/15/99

ATTORNEY - PARTY

Peter M. Lazarus — Bar No. 00128055
Law offices of Joseph M. Lazarus
3700 Wilshire Blvd., Suite 740
Los Angeles, CA 90010

Plaintiff and appellant
Kenneth K. Chemi

Gretchen S. Carner — Bar No. 00132877
Luce, Forward, Hamilton & Scripps Llp
777 South Figueroa St., Suite 3600
Los Angeles, CA 90017

Defendant-respondent
CNA Insurance Companies

DOCKET ENTRIES

04/10/99
Notice of appeal lodged/received.
N/A 3/30/99 for Kenneth & Armaity Chemi

08/13/99
Record on appeal filed.
C-3 R-1

09/09/99
Appellant's opening brief.
Attorney: Lazarus, Peter
Party: Chemi, Kenneth

10/27/99
Respondent notified pursuant to rule 17(b).

11/08/99
Respondent's brief.
Attorney: Carner, Gretchen S.
Party: ***CNA Insurance Companies***

11/24/99
Stipulation of extension of time filed to:
to file ARB to 12/24/99 (no order needed)
Attorney: Lazarus, Peter
Party: Chemi, Kenneth

12/23/99
Appellant's reply brief.
Attorney: Lazarus, Peter
Party: Chemi, Kenneth

12/27/99
Case fully briefed.

01/25/00
Calendar notice sent. Calendar date:
2-16-00 @ 9 a.m.

02/16/00
Cause argued and submitted.

02/17/00
Opinion filed.

03/03/00
Rehearing petition filed.
aplts

03/08/00
Petition for rehearing denied.
by aplts.; SOV

04/25/00
Remittitur issued.

04/25/00
Case complete.

CASE DISPOSITION / JUDGES PANEL INFORMATION

Disposition:	Affirmed in full
Date:	02/17/00
Status:	Final Disposition
Opinion Type:	Signed Unpublished
Citation:	
Notes:	9 pgs

Authoring Judge: ***Vogel, Miriam A.***

		VOTE
Judge 1:	Vogel, Miriam A.	
Judge 2:	Spencer, Vaino	Concur
Judge 3:	Ortega, Reuben A.	Concur

END OF DOCKET SHEET

B130849
AUG 13 1999

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
C-3 R-1

KENNETH K. CHEMI & ARMAITY CHEMI	**Case No.: BC 185353**
Plaintiff(s) and APPELLANTS	**Notice(s) of Appeal Filed: MARCH 30, 1999**
vs.	
CNA INSURANCE COMPANIES, a Calif. Corp., et al.	**VOLUME 1 OF 3 VOLUMES**
Defendant(s) and RESPONDENTS	

CLERK'S TRANSCRIPT
HONORABLE WENDELL MORTIMER, Jr., JUDGE
Appeal from the Superior Court, Los Angeles County

A P P E A R A N C E S:

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Counsel for APPELLANT, KENNETH K. CHEMI, et al.

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Tel. # (213) 892-4992

Counsel for RESPONDENT, CNA Casualty of Calif., et al.

APPENDIX C

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 56 HON. WENDELL MORTIMER, JR., JUDGE

KENNETH K. CHEMI, ET AL.,
PLAINTIFFS,

VS.

NO. BC185353

CNA CASUALTY OF CALIFORNIA, ET AL., DEFENDANTS.

REPORTER'S TRANSCRIPT OF PROCEEDINGS
DECEMBER 30, 1998
A.M. SESSION

APPEARANCES:

FOR THE PLAINTIFFS: LAW OFFICES OF JOSEPH M. FREDRICS
BY: JOSEPH M. FREDRICS, ESQ.
BY: PETER M. LAZARUS, ESQ.
3700 WILSHIRE BOULEVARD
SUITE 740
LOS ANGELES, CALIFORNIA
90010
(800) 322-8898

FOR THE ***DEFENDANTS***: LUCE, FORWARD, HAMILTON & SCRIPPS
BY: **GRETCHEN S. CARNER, ATTORNEY AT LAW**
777 S. FIGUEROA STREET
SUITE 3600
LOS ANGELES, CALIFORNIA
90017
(213) 892-4932

REPORTED BY: SHEILA BROCK, CSR 10025
OFFICIAL REPORTER

CASE NUMBER: BC185353
CASE NAME: CHEMI VS. CNA CASUALTY
LOS ANGELES, CALIFORNIA DECEMBER 30, 1998
DEPARTMENT NO. 56 HON. WENDELL MORTIMER, JR., JUDGE
REPORTER: SHEILA BROCK, CSR NO. 10025
TIME: A.M. SESSION
APPEARANCES: (AS HERETOFORE MENTIONED.)

THE COURT: IN THE MATTER OF CHEMI.

THE CLERK: DOES COUNSEL HAVE THE TENTATIVE OF THE COURT?

MR. FREDRICS: YES, WE DO.

THE COURT: DO YOU HAVE THE RESPONDING PARTY WITH PLAINTIFF OVER HERE? FINE.

STATE YOUR APPEARANCES, PLEASE.

MR. FREDRICS: JOSEPH FREDRICS PRESENT FOR THE PLAINTIFF.

MR. LAZARUS: PETER LAZARUS.

DO YOU NEED THAT BACK?

THE COURT: THAT'S MY CHEAT-SHEET.

MR. LAZARUS: PETER M. LAZARUS, L-A-Z-A-R-U-S, WITH THE LAW FIRM OF JOSEPH FREDRICS.

MS. CARNER: **GRETCHEN CARNER** FROM LUCE, FORWARD, HAMILTON & SCRIPPS **FOR DEFENDANT, *CNA CASUALTY OF CALIFORNIA***.

THE COURT: GOOD MORNING.

MY TENTATIVE IS TO GRANT THE MOTION FOR JUDGMENT.

DID YOU WISH TO BE HEARD?

MR. LAZARUS: YES, I DO, YOUR HONOR. JUST GIVE ME A SECOND TO TAKE OUT THESE PAPERS. THERE ARE QUITE A FEW.

I BELIEVE ON THE FIRST POINT ON YOUR TENTATIVE, YOUR HONOR, IT HAD TO DO WITH THE EXPERT'S DECLARATION, AND THEN THERE IS A DISCUSSION FROM THE COURT CONCERNING THE EVIDENCE SUBMITTED OPPOSING THE MOTION.

THE COURT: RIGHT.

MR. LAZARUS: I DO NOT WANT TO FORGET TO DISCUSS VARIOUS MISSTATEMENTS CONTAINED IN THE MOVING PARTY'S PAPERS, SOME OF WHICH WERE DISCUSSED IN OUR OPPOSITION, SOME OF WHICH HAVE NOT BEEN DISCUSSED BECAUSE THEY WERE BROUGHT UP FIRST IN THE MOVING PARTY'S REPLY.

YOUR HONOR, FIRST AND FOREMOST, I THINK THE COURT SHOULD LOOK SPECIFICALLY, IF IT HAS NOT ALREADY, AT THE CASE CITED BY MS. CARNER WITH REGARD TO THE EXPERT'S DECLARATION.

IF THE COURT LOOKS AT THE EXPERT'S DECLARATION, I PRESUME THE COURT IS TAKING -- THAT THE COURT HAS A DUTY AND MUST DISREGARD THE DECLARATION BECAUSE IT IS NOT INDICATING WHAT COUNTY EXECUTED IT. IT'S NOT DATED. FIRST OF ALL, IF THE COURT LOOKS AT THE DECLARATION, THE COURT WILL SEE THAT THERE IS, IN FACT, A DATE ON THE TOP OF IT BECAUSE THERE IS A FAX; FURTHERMORE, I HAVE BROUGHT A CURATIVE FORM WITH ME

BUT MORE IMPORTANTLY COUNSEL CITES THE (PHONETIC) WITCHELL CASE. IN THAT CASE, AND THIS IS VERY IMPORTANT, IT WAS THE MOVING PARTY WHO SUBMITTED THE DECLARATION THAT THE COURT CHOSE TO IGNORE. IN THAT

REASONABLENESS OF CLAIMS, HANDLING OF AUTO CLAIMS OR APRAISING AUTO CLAIMS.

THE COURT: OKAY. I'M GOING TO TAKE ANOTHER LOOK AT THIS AND TAKE THE MATTER UNDER SUBMISSION. I WILL TAKE ANOTHER ANOTHER LOOK AT IT.

BUT DID YOU HAVE ANYTHING FURTHER TO ADD?

MS. CARNER: WITH REGARD TO THE DECLARATION?

THE COURT: WELL, WITH REGARD TO ANYTHING ON THIS .

MS. CARNER: NO. I'D LIKE TO SUBMIT ON THE TENTATIVE, YOUR HONOR.

MR. LAZARUS: GEE, AM I SURPRISED.

IF I MIGHT JUST -- I JUST HAVE ONE THING, FIRST OF ALL, IN RESPONSE TO MS. CARNER'S QUOTING THE C.C.P. IT'S TOTALLY -- IT'S MY OPINION THAT THAT IS TOTALLY INAPPLICABLE HERE. FIRST OF ALL, WHAT YOU SHOULD BE LOOKING AT IS EVIDENCE CODE 801, WHICH DISCUSSES WHAT THE EXPERT MAY RELY ON.

IF YOU READ THAT CODE SECTION AND READ THE LONGER DIVISION COMMENT -- AND IT IS EXTENSIVE -- AND IT MAKES IT VERY CLEAR THAT THE EXPERT HAS BROAD LATITUDE WITH WHAT HE MAY LOOK AT. YES, THE COURT MAY, UNDER CERTAIN CIRCUMSTANCES, WISH TO EXCLUDE, AND THERE ARE CASES SUPPORTING THE FACT THAT, IF THE CAUSE OF A FIRE IS DETERMINED BY BI-STANDARDS, THAT'S INAPPROPRIATE OPINION UPON WHICH TO BASE EXPERT TESTIMONY.

SO IS AN EXPERT TAKING STATEMENTS FROM WITNESSES AS TO THE POINT OF IMPACT IN CARS AND THE REASON

I HAD SUCH FRUSTRATION TRYING TO FIND THE EXHIBIT, I FINALLY LEFT THEM FOR YOU. BUT IF YOU LOOK AT THE SPECIFIC PARAGRAPH CITED IN THE OPPOSITION, A SEPARATE STATEMENT, WHAT THEY DO SHOW ARE PARTICULAR PARAGRAPHS IN THE DEPOSITION WHERE THE INSURED, WHERE MY CLIENT, THE PLAINTIFF, DISPUTES THE FACTS, BROUGHT OUT BY MS. CARNER, WHERE SHE EXPRESSLY HAS A DIFFERENCE OF OPINION.

SHE HAS THE ABILITY IN TRIAL TO IMPEACH HIM WITH ANYTHING IN THAT DEPOSITION, WHICH IS INCONSISTENT. IF HE SAYS ONE THING AND SAYS SOMETHING ELSE LATER ON IN THE DEPOSITION, SHE IS PROPERLY PROTECTED BY HER ABILITY TO DEAL WITH HIM ON THE WITNESS STAND AND BASICALLY ERADICATE HOW THE JURY IS WILLING TO -- THE JURY'S DESIRE TO COMPENSATE HIM IN ANY WAY. BUT I LOOKED AT THOSE ISSUES THIS MORNING OUT IN THE HALL. I OPENED THE DEPOSITION, AND ON EACH OF THOSE CITED PARAGRAPHS IN THE PLAINTIFF'S DEPOSITION, HE DID HAVE A DIFFERENCE OF OPINION FROM WHAT MS. CARNER SAID AND ON THE SUBJECT OF THE DEPOSITION OF HIS WIFE, MY CLIENT'S WIFE, MRS. CHEMI, ARMAITY CHEMI, THAT DEPOSITION WAS SET FOR -- WAS IT YESTERDAY?

MS. CARNER: MONDAY.

MR. LAZARUS: IT WAS SET FOR MONDAY. BUT IT WAS UNAVOIDABLY CONTINUED, BUT WE DON'T HAVE A NEW DATE FROM CNA YET. ***SHE'S GIGGLING***.

MS. CARNER: YOUR CLIENT IS THE ONE THAT NEEDS TO BE DEPOSED. I, UNFORTUNATELY, WAS OUT OF TOWN AND UNAVAILABLE.

MR LAZARUS: SHE WAS UNAVAILABLE. I HAVE NO PROBLEM WITH GIVING HER THAT DEPOSITION, BUT THE POINT IS, ***(Page 16 of Transcript)***

CIVIL REGISTER REPORT

L.A. Superior Court Central
Civil Division

Case Number: BC185353

KENNETH K. CHEMI ET AL VS CNA CASUALTY OF CALIF

CASE HISTORY

Date	Activity

. . .
. . .

03/02/98 *Serv Summ/Compl Fld* **CNA Insuarnce Companies**
1 Served On 02/18/98
Personal Service CCP415.10
PERSON SERVED: DANA WEBB, PERSON AUTHORIZED TO ACCEPT SERVICE OF PROCESS

03/20/98 *Document*
Answer to Unverified Complaint
Filed by: Attorney for Deft/Respnt
On behalf of CNA ***Casualty of*** California Defendant/ Respondent
Filed By Long & Levit, LLP Former Attorney for Pltf/

03/20/89 *Fees Paid*
Received - Fee, Adverse party 189.00
Paid By CNA ***Casualty of*** California Defendant/ Respondent

05/08/98 *Document*
Substitution of Attorney
Filed by: Attorney for Deft/Respnt

06/16/98 *Document*
Notice of Status Conference filed
Filed by: Clerk

06/16/98 *Calendaring DOC/EVT*
Initial Status Conference 07/23/98 8:30 am Dept. 56

07/23/98 *Proceeding/Event*
Initial Status Conference
Matter continued 00/00/00
Dept. 56, Judge Wendell Mortimer, Jr.

07/23/98 *Calendaring DOC/EVT*
Final Status Conference 01/20/99 8:30 am Dept. 56
ALSO SET FOR MSC; T/D 2/8/99

11/02/98 *Document*
Notice
Filed by: Attorney for Pltf/Petnr

11/02/98 *Fees Paid*
1st Day Jury Fee Dep by Plaint 137.00

12/01/98 *Document*
Motion for Summary Judgment
Filed by: Attorney for Deft/Respnt

12/01/98 *Document*
Declaration
Filed by: Attorney for Deft/Respnt

12/01/98 *Document*
Declaration
Filed by: Attorney for Deft/Respnt

12/01/98 *Document*
Brief separate statement
Filed by: Attorney for Deft/Respnt

12/01/98 *Document*
Declaration
Filed by: Attorney for Deft/Respnt

12/01/98 *Fees Paid*
Summary Judgmt/Adj Fee 100.00

12/01/98 *Calendaring DOC/EVT*
Motion for Summary Judgment 12/29/98 9:00 am Dept. 56

12/15/98 *Document*
Opposition Document
Filed by: Attorney for Pltf/Petnr

12/15/98 *Document*
Proof of Service
Filed by: Attorney for Pltf/Petnr

12/15/98 *Document*
Opposition Document to separate statement
Filed by: Attorney for Pltf/Petnr

12/15/98 *Document*
Declaration in suppt of mo
Filed by: Attorney for Pltf/Petnr

12/16/98 *Document*
Proof of Service of deposition subpoena-business records
Person Served: Custodian of records of DMV (Mary Ann George)
Filed by: Attorney for Pltf/Petnr
Filed By Fredrics, Joseph M., Law Offices of
Attorney for Pltf/Petnr
On Behalf of Chemi, Kenneth K. Plaintiff/Petitioner
On Behalf of Chemi, Armaity Plaintiff/Petitioner

12/16/98 *Document*
Proof of Service of civil subpoena
Person Served: Steven Eisner
Filed by: Attorney for Pltf/Petnr
Filed By Fredrics, Joseph M., Law Offices of
Attorney for Pltf/Petnr
On Behalf of Chemi, Kenneth K. Plaintiff/Petitioner
On Behalf of Chemi, Armaity Plaintiff/Petitioner

12/16/98 *Document*
Proof of Service of deposition subpoena-business records
Person Served: Patricia Staggs
Filed by: Attorney for Pltf/Petnr
Filed By Fredrics, Joseph M., Law Offices of
Attorney for Pltf/Petnr
On Behalf of Chemi, Kenneth K. Plaintiff/Petitioner
On Behalf of Chemi, Armaity Plaintiff/Petitioner

12/21/98 *Document*
Proof of Service (5)
Filed by: Attorney for Pltf/Petnr

12/21/98 *Document*
Proof of Service Deposition subpoena personal
appearance on custodian of records , copart inc.
Filed by: Attorney for Pltf/Petnr
Filed By Fredrics, Joseph M., Law Offices of
Attorney for Pltf/Petnr
On Behalf of Chemi, Kenneth K. Plaintiff/Petitioner
On Behalf of Chemi, Armaity Plaintiff/Petitioner

12/21/98 *Document*
Proof of Service
Filed by: Attorney for Pltf/Petnr

12/21/98 *Document*
Proof of Service of deposition subpoena personal appearance custodian of records Insurance Auto Auction aka IAA
Filed by: Attorney for Pltf/Petnr
Filed By Fredrics, Joseph M., Law Offices of
Attorney for Pltf/Petnr
On Behalf of Chemi, Kenneth K. Plaintiff/Petitioner
On Behalf of Chemi, Armaity Plaintiff/Petitioner

12/21/98 *Document*
Proof of Service of civil subpoena on Jeffrey Anderson
Filed by: Attorney for Pltf/Petnr
Filed By Fredrics, Joseph M., Law Offices of
Attorney for Pltf/Petnr
On Behalf of Chemi, Kenneth K. Plaintiff/Petitioner
On Behalf of Chemi, Armaity Plaintiff/Petitioner

12/22/98 *Document*
Declaration IN SUPPT OF REPLY TO MO
Filed by: Attorney for Deft/Respnt

12/22/98 *Document*
Reply Response
Filed by: Attorney for Deft/Respnt

12/22/98 *Document*
Objection Document
Filed by: Attorney for Deft/Respnt

12/29/98 *Proceeding/Event*
Motion for Summary Judgment
Proceeding continued 12/29/98
Dept. 56, Judge Wendell Mortimer, Jr.

12/30/98 *Proceeding/Event*
Motion for Summary Judgment
Case Taken Under Submission 12/30/98
Dept. 56, Judge Wendell Mortimer, Jr.

01/05/99 *Case Dispo / Manner*
Summary Judgment per 437c CCP
Before Trial - Date Not Assigned

01/05/99 *Proceeding/Event*
Ruling on Submitted Matter
Case Decided 01/05/99
Dept. 56, Judge Wendell Mortimer, Jr.

01/06/99 *Document*
Order GRTG CNA CASUALTY'S MSJ
Filed by: Defendant

01/15/99 *Document*
Summary Judgment
Filed by: Defendant

01/20/99 *Proceeding/Event*
Final Status Conference ALSO SET FOR MSC; T/D 2/8/99
Off Calendar 01/20/99
Dept. 56, Judge Wendell Mortimer, Jr.

02/01/99 *Document*
Notice of Entry of Judgment BY COURT
Filed by: Attorney for Deft/Respnt
On Behalf of CNA ***Casualty of*** California Defendant/ Respondent
On Behalf of *CNA Insurance Companies* **Defendant/ Respondent**
Filed By Luce, Forward, Hamilton & Scripps, Law O/ Attorney for Deft/Respnt

02/08/99 *Proceeding/Event*
Jury Trial 5 DAYS ESTIMATED
Advanced to a Previous Date 01/20/99
Dept. 56, Judge Wendell Mortimer, Jr.

03/31/99 *Document*
Ntc to Atty re Notice of Appeal
Filed by: Clerk

04/08/99 *Document*
Notice of Designation of Record
Filed by: Petitioner

04/24/00 *Document*
Remittitur AFFIRMED
ENTERED ON 5/18/00. FILE TO RECORDS ON 5/18/00.
VOL 2
Filed by: Clerk

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

DATE: 01/05/99	**DEPT.** 56
HONORABLE Wendell Mortimer, Jr. JUDGE	G. CAMPBELL DEPUTY CLERK
	M. MEDARIS ASST. CLERK
NONE Deputy Sheriff	NONE Reporter

BC185353	Plaintiff
	Counsel NO APPEARANCES
KENNETH K CHEMI ET AL	
VS	Defendant
CNA **CASUALTY OF CALIF ET AL**	Counsel

NATURE OF PROCEEDINGS:

RULING ON SUBMITTED MATTER

Court having heard argument and having taken this matter under submission on December 30, 1998 rules as follows:

Motion for Summary Judgment granted. Godwin declaration does not raise triable issues of fact through competent evidence. His Curriculum Vitae does not establish that he has any experience in automobile claims handling in the last 20 years, nor any experience in appraisal. His conclusions are unsupported and incompetent.

Copies mailed to counsel this date via U.S. Mail.

GRETCHEN S. CARNER, ESQ.
ERIN E. MARTENS, ESQ.
777 SO. FIGUEROA ST. #1600
LOS ANGELES, CA 90017

JOSEPH M. FREDRICS, ESQ.
3700 WILSHIRE BLVD. #740
LOS ANGELES, CA 90010

MINUTES ENTERED
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COUNTY CLERK

APPENDIX D

LUCE, FORWARD, HAMILTON & SCRIPPS LLP
GRETCHEN S. CARNER State Bar No. 132877
777 South Figueroa Street, Suite 3600
Los Angeles, California 90017
Tel. (213) 892-4992 Fax. (213) 892-7731

Attorneys for ***Defendant CNA CASUALTY OF CALIFORNIA*** (also erroneously sued herein as "CNA INSURANCE COMPANIES")

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

KENNETH K. CHEMI, an individual; and ARMAITY CHEMI, an individual, Plaintiffs, vs. ***CNA CASUALTY OF CALIFORNIA*** a corporation; CNA INSURANCE COMPANIES; MICHELLE A. CHAMBERS, an individual; JEFFREY A. ANDERSON, an individual; TONY JIMENEZ, an individual; and DOES 1 through 50, inclusive, Defendants.	CASE NO. BC 185353 [Assigned for all purposes to Judge Wendell R. Mortimer, Jr.] Action Filed: February, 3, 1998 ***DECLARATION OF GRETCHEN S. CARNER*** IN SUPPORT OF CNA CASUALTY'S MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, FOR SUMMARY ADJUDICATION OF ISSUES

[Filed concurrently with CNA Casualty's Notice of Motion and Motion for Summary Judgment, etc., Memorandum of Points and Authorities; Separate Statement of Material Undisputed Facts; Declarations of Chambers and Anderson]

I, GRETCHEN S. CARNER declare as follows:

1. *I am* special counsel with the law firm of Luce, Forward, Hamilton & Scripps LLP, *counsel of record in this matter for* ***CNA CASUALTY OF CALIFORNIA*** (also erroneously sued herein as "CNA INSURANCE COMPANIES"). I am the attorney primarily responsible for the handling of this file. I have personal knowledge of the matters contained herein and if called upon to do so I could and would testify competently thereto.

2. This declaration is submitted in support of ***CNA Casualty of California's*** Motion for Summary Judgment, or in the alternative, for Summary Adjudication of Issues Against Plaintiffs.

3. On August 26, 1998, I attended the deposition of Tony Jimenez. He testified in pertinent part as follows:

a. Mr. Jimenez is a senior field appraiser for ***CNA Casualty of California*** and has been so for over six years. (Deposition of Jimenez, p. 5, lines 19-25; p. 6, lines 1-4.)

b. Mr. Jimenez called Mr. Chemi to set up an inspection of the damaged vehicle. The inspection was scheduled to take place at a relative's home where the vehicle was parked and driveable. The assignment sheet indicated that the insured felt that the vehicle was a total loss. Mr. Chemi wanted to be present for the inspection. Mr. Jimenez told Mr. Chemi that he would arrive to inspect the vehicle sometime between 12:00 p.m. and 2:00 p.m. on March 26, 1997, as he had several other appointments that day. (Deposition of Jimenez, p. 43, lines22-25; p. 44, lines 1-5.)

c. Mr. Jimenez arrived for the inspection at 11:55 a.m. on March 26, 1997. The inspection took approximately fifteen to twenty minutes. The car was locked and Mr. Jimenez could not inspect the interior of the trunk. (Deposition of Jimenez, p. 44, lines 6-7, 20; p. 11, lines 3-25; p. 17, lines 9-12.)

d. Mr. Chemi did not show up for the inspection. Mr. Jimenez made special arrangements with Mr. Chemi to arrive within a two hour time frame, instead of the usual four hour time frame. Before leaving the location of the inspection, at approximately 12:20 p.m., Mr. Jimenez tried to reach Mr. Chemi, using his mobile phone, to let Mr. Chemi know that he had completed the inspection. (Deposition of Jimenez, p. 60, lines 16-25; p.63, lines 5-14.)

e. Mr. Jimenez writes his estimates with the assistance of a computer program provided by CCC. "The computer computes all the information that [he] put[s] into the body of the estimate, and then it will write the estimate itself." (Deposition of Jimenez, p. 29, lines 20-25.)

f. The total estimate printed by the computer based on Mr. Jimenez' input was $11,147.27. (Deposition of Jimenez, p. 31, lines 15-20.)

g. After completing the estimate, Mr. Jimenez ran a CCC evaluation on the vehicle. The CCC evaluation determines the actual cash value of the vehicle. Mr. Jimenez called CCC, gave them identifying information on the vehicle and they gave him an instant cash value of $11,555.69. He wrote that figure on the appraisal report and sent it to the adjuster. (Deposition of Jimenez, p. 40, lines 1-25; p. 41, lines 1-12.)

True and correct copies** of the referenced pages from the deposition transcript of Tony Jimenez are attached hereto* as Exhibit U. ***The entire deposition transcript of Tony Jimenez will be lodged with the court before the hearing.

4 On October 13, 1998, I attended the deposition of Steven D. Eisner. Mr. Eisner testified in pertinent part as follows:

a. At the time of the deposition, Mr. Eisner was employed by ***CNA Casualty of California*** as the Regional Field Auto Supervisor. As such, he supervised staff appraisers, independent appraisers, and direct repair shops. (Deposition of Eisner, p. 9, lines7-17.)

b. On or about August 5, 1997, Mr. Eisner agreed to review the initial damage/repair estimate with Tony Jimenez. (Deposition of Eisner, p. 30, lines 5-11.)

c. On or about August 6, 1997, Mr. Eisner reviewed the initial damage/repair estimate and photographs of the damage with Tony Jimenez. He found no indication that the estimate was higher than it should have been based upon the visual damage inspected. (Deposition of Eisner, p. 35, lines 20-25; p. 36, line 1.)

d. On August 15, 1997, Mr. Eisner reviewed the four estimates of repair obtained by Mr. Chemi. He found certain discrepancies between Mr. Chemi's estimates and Mr. Jimenez' estimate. Based upon these differences, and the photographs of the vehicle, he concluded that the ***initial repair/damage estimate "does indeed appear to have been an overwritten estimate."*** (Deposition of Eisner, p. 45, lines 14-18; Exhibit F, File Activity Notes, p. CNA0029-30.)

e. On September 22, 1997, Mr. Eisner inspected plaintiff's repaired vehicle. He checked to see if the repairs matched the repair estimate from Star Auto Body, and for the most part the repairs did match. He did not see any evidence of repair to the left rear frame rail, the bumper was still misaligned and the left quarter panel inner was repaired not replaced, the floor was uneven and the trunk lid left hinge had a distortion in it. He believed "to the uneducated eye, the vehicle looked good." (Deposition of Eisner, p. 75, lines 14-16; p. 80, lines 7-20; Exhibit F, File Activity Notes, p. CNA0027-28.)

f. *Mr. Eisner discussed with Mr. Jimenez the fact that his estimate was $11,147 and that Mr. Chemi had the car repaired for $4,418.* ***He told Mr. Jimenez that his estimate was overwritten and cautioned him "If you don't see it, don't write it."*** Mr. Jimenez indicated his agreement to do so. (Deposition of Eisner, p. 86, lines 1-11, 21-25; p. 87, lines 1-4.)

True and correct copies of the referenced pages from the deposition transcript of Steven D. Eisner are attached hereto as Exhibit V. ***The entire deposition transcript of Steven D. Eisner will be lodged with the court before the hearing.***

5. In response to special interrogatories served on Kenneth Chemi, Mr. Chemi has responded that he and his wife are still owed $75 for a towing expense and $500 for perma-plate coating on the vehicle. Mr. Chemi denies seeking medical treatment for his alleged emotional distress and does not claim any out of pocket damages for medical expenses or lost wages. A true and correct copy of the special interrogatories served on Kenneth Chemi is attached hereto as Exhibit W. A true and correct copy of Kenneth Chemi's responses to special interrogatories is attached hereto as Exhibit X.

6. In response to special interrogatories served on Armaity Chemi, Mrs. Chemi has responded that she and her husband are still owed $75 for a towing expense and $500 for perma-plate coating on the vehicle. Mrs. Chemi denies seeking medical treatment for her alleged emotional distress and does not claim any out of pocket damages for medical expenses. Armaity Chemi claims without documentation or factual support that she has lost $10,000 of income due to emotional injuries. A true and correct copy of the special interrogatories served on Armaity Chemi is attached hereto as Exhibit Y. A true and correct copy of Armaity Chemi's responses to special interrogatories is attached here to as Exbibit Z.

7. On August 20, 1998, plaintiffs produced documents in response to CNA Casualty's first request for production of documents. Among the documents produced was Mr. Chemi's April 6, 1997 complaint to the Department of Insurance with enclosures (document nos. 78 to 106) and the Department of Insurance's response to the complaint (document no. 113.) True and correct copies of these documents are attached as Exhibits AA and BB.

8. Plaintiffs have refused to produce documentation of their alleged attorneys' fees based on attorney-client privilege grounds. See Exhibits X and Z.

9. On November 19, 1998, I took the deposition of Kenneth Chemi. I do not have the transcript of the deposition as of the date of this declaration. The transcript will be available in time for the hearing on the pending motion. At the deposition, Mr. Chemi produced a copy of a credit report which shows that the Chemi's have a clear credit rating. A true and copy of credit report is attatched hereto as Exhibit CC.

10. Mr. Chemi testified that he did not send a copy of his April 16, 1997 complaint to the Department of Insurance with its enclosures to CNA.

11. Mr. Chemi testified that he has cashed the $4,418.71 check.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 1st day of December, 1998 at Los Angeles, California.

/s/ Gretchen S. Carner

GRETCHEN S. CARNER

FILE NO. 982168

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

KENNETH K. CHEMI, an individual; and ARMAITY CHEMI, an individual, Plaintiffs, vs. *CNA CASUALTY OF CALIFORNIA*, a corporation, et al., Defendants.	No. BC 185 353

DEPOSITION OF TONY JIMENEZ

Wednesday, August 26, 1998

Los Angeles, California

REPORTED BY: Catherine M. Jackson, CSR No. 7402

KUSAR & HARRIS
CERTIFIED SHORTHAND REPORTERS
A Professional Corporation
111 W. Ocean Blvd., Suite 525, Long Beach, CA 90802,
(562) 437-8485, FAX 437-8073

. . .

. . .

and at a later date, hopefully, it will be filed with the court, if it goes on trial.

But anyway, just let me state that if you don't understand a question I ask, don't answer it. Ask me to repeat it or rephrase it, or whatever, because it may be embarrassing to you. Because if this case goes to court, you may have answered one way today, and if you didn't understand question, you may answer a different way in court. So to avoid that, if you don't understand something, just ask me to repeat it, rephrase it, and I will. Okay?

A. Okay.

Q. You understand this proceeding, even though we are in my library, has the same force and effect as if you were testifying in front of a judge and jury, and the rules of perjury pertain?

A. I do.

Q. **Who is your employer?**

A. ***CNA Insurance Company.***

Q. And how long have you been employed there?

A. Six years, five months.

Q. You are not planning on leaving there any time soon, are you?

A. No, sir.

Q. And what is your occupation with them?

A. I'm a senior field appraiser.

Q. And could you give me a description of what a senior field appraiser does?

A. Basically, *I inspect vehicles in Los Angeles, San Bernardino County, assess the damages on collision damages, theft losses, fire losses for* ***CNA Insurance Company***.

Q. This all involves vehicles only?

A. Yes, sir.

Q. Did you have experience in this same field before going with CNA six years ago?

A. Yes, sir, I did.

Q. Can you give me your background in this type of work?

A. You mean actually where I started?

Q. Yes.

A. Basically, I started out at San Ysidro Junior College, took a couple of estimating courses. From there, I went to work for a body shop called Bob Currie Ford.

Q. Can you give us years, too, please, approximate years?

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
JOSEPH A. LANE, CLERK

DIVISION 1 October 27, 1999

Gretchen S. Carner
Luce, Forward, Hamilton & Scripps Llp
777 South Figueroa St.
Suite 3600
Los Angeles, CA 90017

Kenneth & Armaity Chemi
v.
CNA Insurance Companies
B130849
Los Angeles County No. BC185353

All Counsel:

Counsel for respondent(s) is hereby notified that if their brief is not on file within 15 days after the date of this notice, or good cause shown for relief from default, the appeal will be submitted for decision upon the record and the appellant's opening brief. (Rule17(b), California Rules of Court.)

Respondent(s) should take notice that failure to file a brief may be deemed a waiver of oral argument.

Very truly yours,
Joseph A. Lane, Clerk

by:_____
Deputy Clerk

cc: Peter M. Lazarus
File

Second Appellate District
300 South Spring St., Room 2217
Los Angeles, CA 90013
(213) 897-2307

D10

No. B130849

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION ONE

KENNETH K. CHEMI AND ARMAITY CHEMI,

Plaintiff and Appellant,

v.

CNA **CASUALTY OF** CALIFORNIA (also erroneously sued herein as "CNA INSURANCE COMPANIES")

Defendant and Respondent.

Appeal from judgment of the Superior Court,
County of Los Angeles, No. BC 185353
Hon. Wendell Mortimer, Jr., Judge

RESPONDENT'S BRIEF

Gretchen S. Carner, Cal. St. Bar No. 132877
LUCE, FORWARD, HAMILTON & SCRIPPS LLP
777 South Figueroa, Suite 3600
Los Angeles, California 90017
(213) 892-4992

Attorneys for Defendant/Respondent
CNA **CASUALTY *COMPANY* OF** CALIFORNIA
[also erroneously sued as "CNA Insurance Companies"]
D11

APPENDIX E

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
JOSEPH A. LANE, CLERK

DIVISION 1 January 25, 2000

Gretchen S. Carner
Luce, Forward, Hamilton & Scripps Llp
777 South Figueroa St.
Suite 3600
Los Angeles, CA 90017

Kenneth & Armaity Chemi
v.
CNA **Insurance Companies**
B130849 / BC185353 dr

This case is ordered on Calendar for February 16, 2000 at 9:00 A.M., before Division One.

PLEASE COMPLETE THIS FORM AND RETURN IT IMMEDIATELY. IF IT IS NOT RECEIVED WITHIN TEN (10) DAYS FROM THE DATE SHOWN ABOVE, YOU WILL BE DEEMED TO HAVE WAIVED ORAL ARGUMENT. If you are disposed to waive argument, we request that you endeavor to arrange with your adversary for a mutual waiver. You are reminded that although the court welcomes oral argument, the justices will have reviewed your case prior to the hearing; therefore repetition of the facts or contents of your briefs is not helpful.

1. Is this case ready for submission by you without oral argument? *Yes* (Manuscript)
(If the answer is "Yes", then sign and return this form)

2. If oral argument is desired, amount of time requested:_____

PLEASE NOTE: DIVISION ONE'S CALENDAR WILL BE COMPILED ACCORDING TO THE ESTIMATES PROVIDED ON THIS FORM, WITH SHORTER ARGUMENTS AT THE BEGINNING OF THE CALENDAR AND THE LONGER ARGUMENTS AT THE END. UNLESS CIRCUMSTANCES WARRANT OTHERWISE, REVISED ESTIMATES WILL NOT BE REQUESTED AT THE TIME OF ORAL ARGUMENT AND CASES WILL BE CALLED IN THE ORDER THEY APPEAR ON THE CALENDAR. PLEASE TAKE THIS INTO ACCOUNT WHEN ESTIMATING THE TIME YOU REQUIRE.

3. Name of attorney who will argue the case:_____

4. Name of Firm:_____

Signed: */s/ Gretchen S. Carner*

Attorney for: *Defendant CNA* ***Casualty Company***
(Manuscript)

Please complete and return this request promptly to: **Clerk, Court of Appeal, Second Appellate Dist., Div. One, 300 So. Spring St., Suite 2217, Los Angeles, CA 90013**

#2

ATTORNEYS ADDRESSING THE COURT:

Please furnish the clerk with your name for entry in the minutes.

Name *GRETCHEN S. CARNER* (Manuscript)
(PLEASE PRINT)

Appearing for {**Appellant** / **Respondent**} *Respondent CNA Casualty Co.* (Manuscript)

Title of case *Chemi* **vs.** *CNA Casualty Co.* (Manuscript)

No. B130849

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION ONE

KENNETH K. CHEMI and ARMAITY CHEMI
Plaintiffs and Appellants,

vs.

CNA INSURANCE COMPANIES, a California Corporation, **ET AL.**
Defendants and Respondents

STIPULATION EXTENDING TIME FOR FILING BRIEF

The parties hereto, through their respective counsel, stipulate to the following sequence and extension of time for filing brief in this case:

1. Appellants, Kenneth K. Chemi and Armaity Chemi shall have an extension of 30 days for filing its Appellant's Reply Brief, so that this brief shall be due on December 24, 1999.

This stipulation shall be without prejudice to any party seeking further extensions of time from the Court.

DATED: *Nov. 22*, 1999 */s/ Gretchen S. Carner*
(Manuscript) Gretchen S. Carner
Luce, Forward, Hamilton & Scripps, LLP
Attorneys for Defendant/Respondent
CNA Casualty Company of California

DATED: *Nov. 23*, 1999 */s/ Demetrios Papanikolas* (Illegible)
(Manuscript) Demetrios Papanikolas
Law Offices of Joseph M. Fredrics
Attorneys for Plaintiffs/Appellants
Kenneth K. Chemi and Armaity Chemi

LUCE, FORWARD, HAMILTON & SCRIPPS LLP
ATTORNEYS AT LAW • FOUNDED 1873

GRETCHEN S. CARNER
DIRECT DIAL NUMBER (213) 892-4932

November 22, 1999

Demetrios Papanikolas, Esq.
Law Offices of Joseph M. Fredrics
3700 Wilshire Boulevard, Suite 740
Los Angeles, California 90010-2656

Re: ***Chemi v. CNA Casualty of California***
Los Angeles Superior Court Case No. BC 185353

Dear Mr. Papanikolas:

Enclosed is my original signature on the Stipulation for Extension to File Reply Brief.

If you have any questions, please do not hesitate to call me.

Very truly yours,

/s/ Gretchen S. Carner
GRETCHEN S. CARNER

GSC:mvh/53809
Enclosure

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
JOSEPH A. LANE, CLERK

DIVISION 1 January 25, 2000

Peter M. Lazarus
Law offices of Joseph M. Fredrics
3700 Wilshire Blvd.
Suite 740
Los Angeles, CA 90010

Kenneth & Armaity Chemi
v.
CNA **Insurance Companies**
B130849 / BC185353 pa

This case is ordered on Calendar for February 16, 2000 at 9:00 A.M., before Division One.

PLEASE COMPLETE THIS FORM AND RETURN IT IMMEDIATELY. IF IT IS NOT RECEIVED WITHIN TEN (10) DAYS FROM THE DATE SHOWN ABOVE, YOU WILL BE DEEMED TO HAVE WAIVED ORAL ARGUMENT. If you are disposed to waive argument, we request that you endeavor to arrange with your adversary for a mutual waiver. You are reminded that although the court welcomes oral argument, the justices will have reviewed your case prior to the hearing; therefore repetition of the facts or contents of your briefs is not helpful.

1. Is this case ready for submission by you without oral argument? No
(If the answer is "Yes", then sign and return this form)

2. If oral argument is desired, amount of time requested: 10 minutes

PLEASE NOTE: DIVISION ONE'S CALENDAR WILL BE COMPILED ACCORDING TO THE ESTIMATES PROVIDED ON THIS FORM, WITH SHORTER ARGUMENTS AT THE BEGINNING OF THE CALENDAR AND THE LONGER ARGUMENTS AT THE END. UNLESS CIRCUMSTANCES WARRANT OTHERWISE, REVISED ESTIMATES WILL NOT BE REQUESTED AT THE TIME OF ORAL ARGUMENT AND CASES WILL BE CALLED IN THE ORDER THEY APPEAR ON THE CALENDAR. PLEASE TAKE THIS INTO ACCOUNT WHEN ESTIMATING THE TIME YOU REQUIRE.

3. Name of attorney who will argue the case:_____
DEMETRIOS PAPANIKOLAS

4. Name of Firm: Law Offices of Joseph M. Fredrics

Signed: */s/ Demetrios Papanikolas* (Illegible)

Attorney for: Kenneth & Armaity Chemi

Please complete and return this request promptly to: **Clerk, Court of Appeal, Second Appellate Dist., Div. One, 300 So. Spring St., Suite 2217, Los Angeles, CA 90013**

#2

ATTORNEYS ADDRESSING THE COURT:

Please furnish the clerk with your name for entry in the minutes.

Name *Demetrios Papanikolas* (Manuscript)

(PLEASE PRINT)

Appearing for {**Appellant** / **Respondent**} ("**Appellant**" *circled*)

Title of case *Chemi* **vs.** *CNA* ***Insurance*** (Manuscript)

LAW OFFICES
JOSEPH M. FREDRICS
A PROFESSIONAL CORPORATION
3700 WILSHIRE BOULEVARD, SUITE 740
LOS ANGELES, CALIFORNIA 90010
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JOSEPH M. FREDRICS
DEMETRIOS PAPANIKOLAS
VALLI FREEMAN

OF COUNSEL
STANLEY ODA

February 22, 2000

Kenneth K. Chemi
Armaity Chemi
2204 Shreve Avenue
Simi Valley, CA 93063

RE: *Chemi v.* ***CNA Insurance Companies***

Dear Mr. and Mrs. Chemi:

Please be advised that the Court of Appeal has ruled in your case. Unfortunately, the Court affirmed the order of summary judgment against you, finding that there was no showing of any prejudice to yourself, and further that as a matter of law, CNA acted reasonably.

Although you may seek review of this decision by the Supreme Court, we believe that such an effort would have a very low chance of success, as it is unlikely that the Supreme Court would even agree to hear your case. In our opinion a

further appeal would merely be throwing good money after bad. Further, our office would require an additional retainer of $7,500.00 to pursue a further appeal. Please be advised that certain time limits apply to any further appeals you wish to file, and should you wish to proceed with this matter further, you should contact this office immediately to discuss your case.

Very truly yours,

LAW OFFICES OF JOSEPH M. FREDRICS
A Professional Law Corporation

/s/ Demetrios Papanikolas (Illegible)
Demetrios Papanikolas

APPENDIX F

(THE GREAT SEAL OF THE STATE OF CALIFORNIA)
OFFICE OF THE CLERK
COURT OF APPEAL
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

JOSEPH A. LANE, CLERK

DANIEL P. POTTER
Chief Deputy

Second Floor, North Tower
300 South Spring Street
Los Angeles, California 90013
Telephone: (213) 830-7000

February 16, 2001

Kenneth K. Chemi
2204 Shreve Anenue
Simi Valley, CA 93063

Re: ***Chemi, et al. v. CNA Insurance Companies, et al.***
Court of Appeal No. B130849

Dear Mr. Chemi:

In reference to the above-mentioned matter, attached is the opinion filed on February 17, 2000, affirming the trial court judgment. With the remittitur filed on April 25, 2000, this appeal is final. Your request in addition to the exhibits (enclosed), have not been filed with this court and are being returned.

Sincerely,

/s/ Joseph Lane
Joseph Lane, Clerk

Enclosures